

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**MERRITT HAWKINS  
& ASSOCIATES, LLC,**

**Plaintiff,**

**v.**

**LARRY SCOTT GRESHAM,  
BILLY BOWDEN, AND  
CONSILIUM STAFFING, LLC,**

**Defendants.**

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**CIVIL ACTION NO.  
13-CV-00312-P**

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**APPENDIX IN SUPPORT OF DEFENDANTS GRESHAM AND BOWDEN'S  
RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Defendants Scott Gresham and Billy Bowden serve their Appendix in Support of their Response to Plaintiff's Motion for Partial Summary Judgment and Brief in Support Thereof, as follows:

<b><u>Tab</u></b>	<b><u>Document</u></b>	<b><u>App No.</u></b>
A.	Condensed Deposition of Mark Smith (dated May 20, 2014) .....	001-036
B.	Condensed Deposition of Tim Beidle (dated May 16, 2014, including Dep. Ex. 113) .....	037-079
C.	Condensed Deposition of Billy Jess Bowden (dated February 4, 2014) .....	080-114
D.	Condensed Deposition of Larry Scott Gresham (dated February 13, 2014, including Dep. Exs. 4, 11, 12, 21, 23) .....	115-184
E.	MHA-Bowden Employment Agreement (dated April 28, 2008) .....	185-192
F.	MHA-Gresham First Employment Agreement (dated March 31, 2008) .....	193-201

- G. MHA-Gresham Second Employment Agreement (dated May 17, 2010) .....202-211
- H. Text Messages (dated September 17, 2012 to November 4, 2012) (Gresham Dep. Ex. 18) .....212-233

Date: August 1, 2014

Respectfully submitted,

/s/ John Volney

Jeffrey M. Tillotson, P.C. ([jmt@lynnllp.com](mailto:jmt@lynnllp.com))

Texas Bar No. 20039200

John Volney ([jvolney@lynnllp.com](mailto:jvolney@lynnllp.com))

Texas Bar No. 24003118

**LYNN TILLOTSON PINKER & COX, L.L.P.**

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

(214) 981-3800 Telephone

(214) 981-3839 Facsimile

**ATTORNEY FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served as shown below on counsel of record on August 1, 2014:

**Via ECF**

Brian A. Colao ([bcolao@dykema.com](mailto:bcolao@dykema.com))

Christine A. Nowak ([CNowak@dykema.com](mailto:CNowak@dykema.com))

Zachary Q. Hoard ([zhoard@dykema.com](mailto:zhoard@dykema.com))

DYKEMA GOSSET PLLC

Comerica Bank Tower

1717 Main Street, Suite 4000

Dallas, Texas 75201

(214) 462-6400 Telephone

(214) 462-6401 Facsimile

/s/ John Volney

John Volney

Transcript of the Testimony of  
**Mark Smith**

**Date:**

May 20, 2014

**Case:**

Merritt Hawkins & Associates v. Larry Scott Gresham, et al

Kim Tindall and Associates, LLC

Phone: 210-697-3400

Fax: 210-697-3408

Email: ktindall@ktanda.com

Internet: [www.kimtindallandassociates.com](http://www.kimtindallandassociates.com)

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THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MERRITT HAWKINS &	)	
ASSOCIATES	)	
Plaintiff,	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	13-CV-00312-P
LARRY SCOTT GRESHAM AND	)	
BILLY BOWDEN,	)	
Defendants.	)	

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ORAL AND VIDEOTAPED DEPOSITION OF  
CORPORATE REPRESENTATIVE

MARK SMITH

MAY 20, 2014

VOLUME 1  
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ORAL AND VIDEOTAPED DEPOSITION OF MARK SMITH,  
produced as a witness at the instance of the DEFENDANTS,  
and duly sworn, was taken in the above-styled and  
numbered cause on May 20, 2014, from 9:54 a.m. to 12:44  
p.m., before Lei Sherra Torrence, CSR in and for the  
State of Texas, reported by machine shorthand, at the  
offices of Dykema Gosset, PLLC, Comerica Bank Tower,  
1717 Main Street, Suite 4000, Dallas, Texas, pursuant to  
the Federal Rules of Civil Procedure and the provisions  
stated on the record or attached hereto.

Mark Smith

May 20, 2014

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APPEARANCES

COUNSEL FOR THE PLAINTIFF:

Mr. Brian Colao

DYKEMA GOSSET PLLC

Comerica Bank Tower

1717 Main Street

Suite 4000

Dallas, Texas 75201

(214) 462-6400

(214) 462-6401 (fax)

Bcolao@dykema.com

COUNSEL FOR THE DEFENDANTS:

Mr. Jeffrey Tillotson

Mr. John Volney

LYNN TILLOTSON PINKER & COX, LLP

2100 Ross Avenue

Suite 2700

Dallas, Texas 75201

(214) 981-3800

(214) 981-3839 (fax)

Jvolney@lynnllp.com

THE VIDEOGRAPHER:

Mr. Alex Downing

ALSO PRESENT:

Ms. Whitney Laughlin

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THE VIDEOGRAPHER: Today's date is May 20th,

2014. The current time is 9:54 a.m. We're here to take

the deposition of Mark Smith. If the attorneys present

could please identify yourselves and state who you

represent.

MR. COLAO: Brian Colao for Merritt Hawkins.

MR. TILLOTSON: Jeff Tillotson and John

Volney for the defendants.

THE VIDEOGRAPHER: And the court reporter

can swear in the witness.

MARK SMITH,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. TILLOTSON:

Q. If you'll, state your full name for us.

A. Mark E. Smith.

Q. Where do you currently work?

A. I currently work at Merritt Hawkins & Associates.

Q. Your title there?

A. President.

Q. Are you the, in effect, chief officer for Merritt

Hawkins?

A. In effect, yes.

Q. Whom do you report to, if anyone?

A. Susan Sulka (phonetic), CEO of AMN Healthcare.

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Q. What's the relationship between AMN Healthcare

and Merritt Hawkins?

A. Merritt Hawkins is owned by AMN Healthcare.

Q. How many direct reports do you have at Merritt

Hawkins?

A. Direct reports, six.

Q. And, if you will, describe for us overall your

job responsibilities at Merritt Hawkins.

A. As president of Merritt Hawkins I'm responsible

for the performance of the organization, the strategy of

the organization, financial decisions, investments we

make, evaluation and performance of my direct reports

and their reports -- their direct reports as well. Just

in general the day-to-day operations of the business,

report to our CEO and to our board of directors and

really everything that occurs on a daily basis at

Merritt Hawkins is somehow I hope to influence.

Q. Is Merritt Hawkins a standalone corporate entity?

A. Honestly I'm not sure.

Q. Is Merritt Hawkins a separate legal entity to

your knowledge?

A. I believe it is. I know that structure has

changed a bit over the years the direction of AMN since

we've sold to them a number of years ago.

Q. Okay. How long have you been at Merritt Hawkins?

2 (Pages 2 to 5)

Kim Tindall and Associates, LLC  
210-697-3400

645 Lockhill Selma, Suite 200

San Antonio, Texas 78216  
210-697-3408

APP. 0003

32c2118f-4968-4edc-99d3-cd0a8a14a4e2

Mark Smith

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<p>1 A. Twenty-five and a half years.</p> <p>2 Q. Was did Merritt Hawkins -- was Merritt Hawkins</p> <p>3 acquired by AMN?</p> <p>4 A. The entity MHA Group, which owned Merritt Hawkins</p> <p>5 another corporation, was acquired by AMN in November of</p> <p>6 2005.</p> <p>7 Q. Okay. And you were working at Merritt Hawkins at</p> <p>8 the time of the acquisition?</p> <p>9 A. Yes, I was.</p> <p>10 Q. What was your job title at the time of the</p> <p>11 acquisition?</p> <p>12 A. At the time of the acquisition I believe my title</p> <p>13 was executive vice president.</p> <p>14 Q. Okay. And you stayed on after the acquisition?</p> <p>15 A. Yes, I did.</p> <p>16 Q. And at what point did you become president at</p> <p>17 Merritt Hawkins?</p> <p>18 A. I shared responsibilities as executive vice</p> <p>19 president. From the time of the acquisition, as I</p> <p>20 mentioned, in November of '05, for several months, and</p> <p>21 the individual I shared responsibilities with departed</p> <p>22 due to a family emergency, I want to say that was in May</p> <p>23 of '06, and by default assumed those responsibilities at</p> <p>24 that time. I couldn't give you the exact date that they</p> <p>25 transitioned in the official title of president but</p>	<p>1 in two employees. It's more about where the employees</p> <p>2 are located for convenience and that one exception to</p> <p>3 that would be our -- we have an academic team which</p> <p>4 focuses really, lack of a better description, the ones</p> <p>5 in Dallas are basically east of the Mississippi, if you</p> <p>6 will. There's some -- there's some variance to that and</p> <p>7 the Atlanta office would handle those -- those -- excuse</p> <p>8 me. Dallas has west of the Mississippi, and the Atlanta</p> <p>9 office handles east of the Mississippi.</p> <p>10 Q. Okay. What's the current business of Merritt</p> <p>11 Hawkins?</p> <p>12 A. Current business is to assist our clients by</p> <p>13 placing physicians and other providers on a permanent</p> <p>14 basis to fulfill their needs.</p> <p>15 Q. Is that -- was that always Merritt Hawkins'</p> <p>16 business while you worked there?</p> <p>17 A. Principally, yes. As a part of that process we</p> <p>18 engage in a tremendous amount of consulting and</p> <p>19 strategic advising. The end result is the placement,</p> <p>20 but to get there we end up assisting the client through</p> <p>21 the process of not just recruiting one physician, but</p> <p>22 are you going to need three, four, five physicians and</p> <p>23 what specialties in assisting them with contracts and to</p> <p>24 provide these potential candidates helping to determine</p> <p>25 whether the physicians will be housed in an office. The</p>
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<p>1 functioned in that role since that period. I want to</p> <p>2 believe that was in very early 2007 if I'm not mistaken.</p> <p>3 Q. Does Merritt Hawkins have its own board of</p> <p>4 directors?</p> <p>5 A. It does not.</p> <p>6 Q. And so the board of directors you mentioned you</p> <p>7 report to or are advised as the board of directors for</p> <p>8 AMN?</p> <p>9 A. That is correct.</p> <p>10 Q. Where is the headquarters of Merritt Hawkins?</p> <p>11 A. It was Irving, Texas.</p> <p>12 Q. And where does it conduct business?</p> <p>13 A. Across the entire country.</p> <p>14 Q. Well, where else do you have -- let me ask a</p> <p>15 better question.</p> <p>16 A. Okay.</p> <p>17 Q. Where else do you have offices besides Irving,</p> <p>18 Texas?</p> <p>19 A. We have offices -- Merritt Hawkins has an office</p> <p>20 in Atlanta, Georgia and in Irvine, California.</p> <p>21 Q. Okay. Are those offices organized according to</p> <p>22 any work responsibilities or geographical areas?</p> <p>23 A. To a certain extent the Atlanta office</p> <p>24 principally operates for the Eastern seaboard. The</p> <p>25 California office is a very small office. Very small as</p>	<p>1 interview process itself and really everything that</p> <p>2 would ever touch that candidate in the recruiting</p> <p>3 process.</p> <p>4 Q. And -- and distinguish what Merritt Hawkins does,</p> <p>5 if you can, from the business of locums tenen.</p> <p>6 A. Locums by definition is temporary placement</p> <p>7 physicians. There is a fair amount of crossover that</p> <p>8 occurs there because a number of clients would utilized</p> <p>9 locum tenens with the intent of doing temp-to-perm</p> <p>10 placement as opposed to just direct-perm placement. At</p> <p>11 the end of the day they fulfill that same need of</p> <p>12 putting a physician in a -- in a role permanently.</p> <p>13 There's two vehicles in which to get there.</p> <p>14 Q. Okay. Does Merritt Hawkins currently conduct any</p> <p>15 temporary placements as part of this business?</p> <p>16 A. We have short-term placements but not what I</p> <p>17 would call temporary in terms of weeks at a time. It</p> <p>18 could be six months to a year, a temporary spot.</p> <p>19 Q. If a client tells one of your Merritt Hawkins</p> <p>20 employees, I'm looking for someone for three weeks, what</p> <p>21 happens at Merritt Hawkins?</p> <p>22 A. At that point they'd be referred to Staff Care.</p> <p>23 Q. Do Merritt Hawkins and Staff Care compete?</p> <p>24 A. Yes, they do.</p> <p>25 Q. On what basis do they compete?</p>

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<p>1 A. We compete for the fact that when there's a need 2 for a physician to fulfill regardless of the setting, 3 more often than not that setting is for a permanent 4 replacement. Staff Care would want to fill that on a 5 temporary basis and then see if their candidate would be 6 someone that would be considered for a permanent basis. 7 Merritt Hawkins would then, of course -- or to secure a 8 contract to fill that search on a permanent basis and to 9 do so very quickly. But there's certainly a tremendous 10 amount of crossover that happens there. 11 Q. Well, does Merritt Hawkins advertise itself as 12 doing temporary placements? 13 A. We do not. 14 Q. Does Merritt Hawkins pitch to any clients or 15 prospective clients that it has expertise or skill in 16 temporary placement? 17 A. We do not. 18 Q. Is there is a difference between how you recruit 19 someone for a temporary assignment versus a permanent 20 assignment? 21 A. I would say there's more commonalities than 22 differences, but there certainly are some differences. 23 Q. Is the training that Merritt Hawkins gives its 24 employees to become permanent placement recruiters 25 different, to your knowledge, from the training Staff</p>	<p>1 temporary assignment. On a permanent assignment you 2 could involve either directly or questions through the 3 family about needs that they would have in the 4 community, difference being if you're going to be here 5 for three weeks or three months versus three years, 6 those kind of questions. So the foundation is really 7 all built the same. The variances occur once it becomes 8 relevant that the job is only three months versus 9 indefinite. 10 Q. Okay. Are -- are you familiar with or are you 11 aware of the training practices used by Staff Care? 12 A. I have been. I have not been as involved in the 13 last couple of years. Times -- 14 Q. Let me -- let me ask a followup, if I could. 15 A. Sure. 16 Q. Are any of the Staff Care training practices used 17 by Merritt Hawkins for its employees? 18 A. No. The training preferences of Staff Care are 19 used many of Merritt Hawkins practices. 20 Q. Okay. 21 A. If that -- 22 Q. Staff Care uses Merritt Hawkins training 23 practices? 24 A. Ab -- yes. 25 Q. Is that right? Okay. And in -- in your mind, or</p>
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<p>1 Care gives to its employees for purposes of doing 2 temporary placements? 3 A. All of the training, whether it be Merritt 4 Hawkins or Staff Care, really begins with the same 5 foundation, the same education about the marketplace, 6 the same education about specialties, et cetera. And 7 that goes forward to the same education of how to reach 8 out to a physician candidate whether it be temporary or 9 permanent, to be able to engage them in conversation, to 10 determine and to be able to figure out what their needs 11 and wants are in a situation to be able to converse with 12 them intelligently about their practice setting. At 13 that point potentially involve a spouse, assist them in 14 giving feedback about their current situation in terms 15 of the current employment situation, in terms of how it 16 compares competitively in the marketplace and then to 17 present them the opportunities. 18 So really through that entire process it's 19 the same conversation to be able to vet, screen and 20 present a candidate to evaluate if they're of sufficient 21 quality for us to be able to work with. Of course, we 22 also arrange travel for the candidate to interview. At 23 the end of the day, the only difference would be 24 potentially family involvement and -- because more often 25 than not the physicians are relocating if they're on a</p>	<p>1 based on your testimony, the recruitment process of 2 doctors has many of the same characteristics, if you 3 will, whether you're recruiting someone for a temporary 4 assignment or a permanent assignment; is that correct? 5 A. Absolutely. 6 Q. Okay. Now, let's talk about Merritt Hawkins in 7 training. Does -- what sort of -- well, let me -- how 8 does Merritt Hawkins find employees to hire? What 9 process does Merritt Hawkins go through to identify 10 them? 11 A. We have a talent acquisition team and this talent 12 acquisition's team focus is to reach out into the 13 marketplace through various vehicles to be able to get 14 the attention of potential candidates. Nothing -- those 15 could be from using LinkedIn, Facebook, various social 16 media sites to do some online advertising and the Career 17 Builder type, Monster, if you will, scenarios to be able 18 to generate interest in the marketplace. It's 19 interesting that we would reach out to somewhere in the 20 range of 80 to 100 individuals that not one TA person 21 may reach out to to fulfill, you know, one spot within 22 Merritt Hawkins, narrow that down to the point that they 23 interview in our office face to face 15 to 20, I would 24 guess. And then of that 15 to 20 they then invite back 25 somewhere in the range of four to five that they would</p>

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<p>1 pass on to our leadership team. And the leadership team</p> <p>2 based on our typical metrics would on average probably</p> <p>3 hire one of those folks.</p> <p>4 Q. Okay. And how many people in the talent</p> <p>5 acquisition team?</p> <p>6 A. Specific to Merritt Hawkins?</p> <p>7 Q. Yes.</p> <p>8 A. Two.</p> <p>9 Q. Okay. And when you say specific to Merritt</p> <p>10 Hawkins, does Merritt Hawkins use the talent acquisition</p> <p>11 teams of anyone else?</p> <p>12 A. Not directly.</p> <p>13 Q. Okay. Tell me how they indirectly use.</p> <p>14 A. If someone else on the talent acquisition team</p> <p>15 found someone they didn't feel was a good fit from their</p> <p>16 organization, they could pass those folks over to the</p> <p>17 talent acquisition team that supports Merritt Hawkins to</p> <p>18 see if they're a good candidate.</p> <p>19 Q. Okay. Let me -- let me try to -- I got that</p> <p>20 right. So I think what you mean is someone at Staff</p> <p>21 Care identify someone they would refer them to Merritt</p> <p>22 Hawkins?</p> <p>23 A. Well, Staff Care -- excuse me, Staff Care has</p> <p>24 talent acquisition folks that work for them as well.</p> <p>25 Q. Right.</p>	<p>1 Q. Do you pay them by salary or by the hour?</p> <p>2 A. We pay them by salary.</p> <p>3 Q. Do they get bonuses for the more people they</p> <p>4 identify or get hired or is it straight salary?</p> <p>5 A. They get a bonus.</p> <p>6 Q. The bonus is based on what?</p> <p>7 A. Based on the number of hires that they generate</p> <p>8 against a -- against a goal or quota.</p> <p>9 Q. Okay. So there is a goal or quote of how many</p> <p>10 people you want them to hire. Is it monthly or</p> <p>11 quarterly or what?</p> <p>12 A. They are paid on a quarterly basis.</p> <p>13 Q. Okay. So the two talent acquisition people have</p> <p>14 a quarterly goal of how many people Merritt Hawkins</p> <p>15 wants to hire?</p> <p>16 A. Correct.</p> <p>17 Q. And how was that quota set?</p> <p>18 A. The leadership team will work with them to</p> <p>19 establish what that goal is based on their expectations</p> <p>20 of -- of growth.</p> <p>21 Q. Okay. What's the turnover at Merritt Hawkins?</p> <p>22 A. I honestly don't know the percentage.</p> <p>23 Q. Do you think it's more than 25 percent a year?</p> <p>24 A. I think it would depend on how you calculated it.</p> <p>25 If you looked at those in training or in those that were</p>
Page 15	Page 17
<p>1 A. If someone at Staff Care found someone they</p> <p>2 thought would be a better fit for a perm placement, they</p> <p>3 could then refer them to Merritt Hawkins' talent</p> <p>4 acquisition team.</p> <p>5 Q. Does Merritt Hawkins pay anything for that</p> <p>6 service or referral?</p> <p>7 A. I'm honestly not sure of the compensation between</p> <p>8 those things. I -- you would think so, but I'm not</p> <p>9 entirely sure.</p> <p>10 Q. Okay. And does Merritt Hawkins ever refer people</p> <p>11 to Staff Care?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Does Merritt Hawkins charge for that?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Okay. So because you're owned by the same parent</p> <p>16 company, Staff Care and Merritt Hawkins were able to</p> <p>17 refer each other prospective candidates for possible</p> <p>18 hiring; is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. And also Staff Care and Merritt Hawkins refer</p> <p>21 each other potential business, correct?</p> <p>22 A. That is the intent.</p> <p>23 Q. Okay. Now, those two people in the talent</p> <p>24 acquisition department, are they full-time?</p> <p>25 A. They are.</p>	<p>1 -- had completed the training process.</p> <p>2 Q. Okay. Fair enough. Let's start first with -- I</p> <p>3 assume Merritt Hawkins hires people and they go through</p> <p>4 a training process; is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. We're going to get to that in a minute, but what</p> <p>7 -- do you have any sense of how many people drop out of</p> <p>8 the training process on average?</p> <p>9 A. If you were to look over an extended period,</p> <p>10 multiple quarters, I would guess it was somewhere</p> <p>11 between 30 to 50 percent.</p> <p>12 Q. And once they've been trained and I guess go to</p> <p>13 work for Merritt Hawkins doing the business, what --</p> <p>14 what do you believe to be the annual turnover rate for</p> <p>15 your employees?</p> <p>16 A. I haven't looked at it recently, but I believe</p> <p>17 it's probably somewhere in the 20 percent range, 20 to</p> <p>18 25 would be my best estimate.</p> <p>19 Q. Okay. And -- and because you have 30 to 50</p> <p>20 percent dropping out of the training process and then</p> <p>21 another 20 to 25 percent dropping out or leaving after</p> <p>22 they've been trained, as a result Merritt Hawkins has to</p> <p>23 have talent acquisition team constantly looking for new</p> <p>24 people; is that fair?</p> <p>25 A. That's fair.</p>

5 (Pages 14 to 17)



Mark Smith

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<p>1 Q. Because you're not only hiring to expand, you're</p> <p>2 also hiring to replace; is that right?</p> <p>3 A. Certainly is.</p> <p>4 Q. Okay. And if one person -- if your turnover rate</p> <p>5 was, let's say, 26 percent instead of 25 percent, on</p> <p>6 average it went up one year, you wouldn't necessarily</p> <p>7 hire another talent acquisition person, would you?</p> <p>8 A. If we went up one percentage point, I wouldn't</p> <p>9 see that happening.</p> <p>10 Q. Okay. And conversely if it went from 25 to</p> <p>11 24 percent, dropped a percentage point, you wouldn't say</p> <p>12 we no longer need that other talent acquisition person,</p> <p>13 correct?</p> <p>14 A. Likely not.</p> <p>15 Q. Okay. So is it fair to conclude from this that</p> <p>16 the talent acquisition team costs at Merritt Hawkins are</p> <p>17 essentially fixed overhead costs? You're going to incur</p> <p>18 them every quarter because you've got constant turnover?</p> <p>19 A. With the exception of the variable compensation</p> <p>20 and their salaries are fixed on those direct overhead</p> <p>21 costs are fixed.</p> <p>22 Q. The variable compensation would be paying them a</p> <p>23 bonus for hitting the quota?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And what's -- what's a quarterly quota for</p>	<p>1 A. The quota is generated from our leadership team</p> <p>2 in terms of where our needs are.</p> <p>3 Q. Okay.</p> <p>4 A. So that's -- they would not be aware of any</p> <p>5 individual adjustment. We do share with them overall</p> <p>6 directions and trends but not necessarily if it's just</p> <p>7 one individual.</p> <p>8 Q. Okay. Now, once they're identified by the talent</p> <p>9 acquisition team and they get into the leadership team</p> <p>10 and at the time they're extended an offer, how long a</p> <p>11 period is that; do you know, from finding them to -- to</p> <p>12 getting them in?</p> <p>13 A. Again, it's one of those situations that could</p> <p>14 vary pretty greatly --</p> <p>15 Q. Sure.</p> <p>16 A. -- depending on the candidate and the needs, but</p> <p>17 I would say from the time that they are -- they've</p> <p>18 gotten past the talent acquisition team and past the</p> <p>19 leadership in general would be one to two weeks.</p> <p>20 Q. Okay. And once they get started, do they</p> <p>21 immediately go to training?</p> <p>22 A. Yes.</p> <p>23 Q. Are they -- are these individuals all being hired</p> <p>24 to do the same thing which is placement?</p> <p>25 A. They would be hired to do really one of two</p>
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<p>1 one of these individuals; do you know?</p> <p>2 A. It moves pretty significantly. I would say it</p> <p>3 could be as many as 12-plus to as few as six.</p> <p>4 Q. Okay. Do you know if any quarterly quota was</p> <p>5 changed, increased because Mr. Gresham departed Merritt</p> <p>6 Hawkins?</p> <p>7 A. I'm not aware of that direct impact, no.</p> <p>8 Q. Okay. So we can at least agree that based with</p> <p>9 respect to talent acquisition cost, Mr. Gresham's</p> <p>10 departure didn't result in any additional cost to</p> <p>11 Merritt Hawkins?</p> <p>12 A. No. It incurred in more loss of getting someone</p> <p>13 through that entire process.</p> <p>14 Q. We're going to get there.</p> <p>15 A. Okay.</p> <p>16 Q. But with respect to how you pay the people to</p> <p>17 identify them, can you at least agree with me that there</p> <p>18 was no additional cost for talent acquisition because</p> <p>19 Mr. Gresham left because you had in place two people</p> <p>20 being paid quotas didn't change based on Mr. Gresham</p> <p>21 departing?</p> <p>22 A. Yes.</p> <p>23 Q. Can we agree on that? Okay. All right. Do you</p> <p>24 -- does the talent acquisition team -- are they told to</p> <p>25 replace specific people or is it just a numerical quota?</p>	<p>1 things and that is either to direct placement, which is</p> <p>2 what we're referring to here in terms of placement of</p> <p>3 physicians, or marketing is what we are, for vernacular,</p> <p>4 in business development.</p> <p>5 Q. Okay. Do -- do you do either or, or does a</p> <p>6 person do both of those?</p> <p>7 A. Either/or, it's a two decimal.</p> <p>8 Q. Okay. So one is placement and the other one is</p> <p>9 marketing?</p> <p>10 A. Correct.</p> <p>11 Q. And are you hired? Is the individual hired to do</p> <p>12 one of those two?</p> <p>13 A. They are.</p> <p>14 Q. Okay. Which of those two did Mr. Gresham do?</p> <p>15 A. Recruiting.</p> <p>16 Q. Which means what? His job titles were what?</p> <p>17 A. Well, he would have been a recruiter search</p> <p>18 consultant.</p> <p>19 Q. Okay. So he would've done what on a day-to-day</p> <p>20 basis?</p> <p>21 A. His -- well, it's multiple facets, but his job</p> <p>22 would have been to -- to work through our processing</p> <p>23 system to be able to locate candidates for the searches</p> <p>24 that he represented, or he would've been spending time</p> <p>25 with clients preparing them to enter the search process.</p>

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<p>1 Q. Okay. And do the marketing people -- are they</p> <p>2 charged with going out and finding people who will then</p> <p>3 engage Merritt Hawkins to do a search?</p> <p>4 A. Yes. Their -- their job is to work a -- work a</p> <p>5 territory and to be able to secure new search agreements</p> <p>6 for Merritt Hawkins.</p> <p>7 Q. Okay. And then once they get a new search</p> <p>8 agreement, someone like Mr. Gresham goes and tries to</p> <p>9 fulfill that search?</p> <p>10 A. Yes. And in that particular case -- once a new</p> <p>11 search comes in, their job is to meet with -- meet with</p> <p>12 the client, go through the great details of the things I</p> <p>13 mentioned earlier regarding the consulting process of</p> <p>14 ensuring that it's a competitive opportunity and the</p> <p>15 client is in a good position to be successful,</p> <p>16 reasonable expectations, parameters, et cetera. And</p> <p>17 then when that's completed, our satisfaction begins a</p> <p>18 search process.</p> <p>19 Q. Okay. Which means finding a doctor or other</p> <p>20 health care provider to fulfill the search?</p> <p>21 A. Our job is to find that candidate and to get them</p> <p>22 to interview in hopes -- hopes that's the case.</p> <p>23 Obviously, the client has a tremendous amount of</p> <p>24 influence and decision on that.</p> <p>25 Q. Got it. So Mr. Gresham had no responsibility for</p>	<p>1 Quite frankly the terms have already likely been</p> <p>2 negotiated.</p> <p>3 Q. Okay.</p> <p>4 A. And so they could resend the same contract or, if</p> <p>5 he so choose, he could pass it on to his marketing</p> <p>6 counterpart and have them do that.</p> <p>7 Q. Do -- do the marketers solicit existing clients</p> <p>8 for Merritt Hawkins for additional business?</p> <p>9 A. Certainly.</p> <p>10 Q. Okay. So a marketer might -- in this particular</p> <p>11 situation might solicit Hospital A or might solicit a</p> <p>12 hospital that Merritt Hawkins has done no business for;</p> <p>13 is that fair?</p> <p>14 A. That is correct.</p> <p>15 Q. Okay. Did Mr. Gresham have access to the</p> <p>16 identities of prospective clients that the marketers</p> <p>17 might call?</p> <p>18 A. Yes.</p> <p>19 Q. How did he have that access?</p> <p>20 A. A big part of when we bring people into the</p> <p>21 organization and why we have these employment agreements</p> <p>22 is so that we can provide them access to the data that</p> <p>23 we have in place, whether that data be candidate driven</p> <p>24 or client driven. So he would have accesses, anyone in</p> <p>25 that role would, to seek client notes and to be able to</p>
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<p>1 convincing clients to engage Merritt Hawkins to do a</p> <p>2 search; is that correct?</p> <p>3 A. Not new clients.</p> <p>4 Q. Okay.</p> <p>5 A. Your job as a recruiter -- our goal is we like to</p> <p>6 have somewhere in the range of 40-plus percent of our</p> <p>7 business to be repeat searches. So your job is to do</p> <p>8 more a quality job with the client's needs or</p> <p>9 expectations, et cetera, and then to be able to engage</p> <p>10 them to be able to extend that relationship with future</p> <p>11 searches.</p> <p>12 Q. Okay. I'm going to use a simple example. So</p> <p>13 let's just assume Mr. Gresham was working with Hospital</p> <p>14 A to provide them with an anesthesiologist on a full-time</p> <p>15 basis and then later Hospital A calls Mr. Gresham and</p> <p>16 says now we need a urologist. Would -- would</p> <p>17 Mr. Gresham then be the one to negotiate the terms of --</p> <p>18 of what that search would pay to Merritt Hawkins or</p> <p>19 would a recruiter do that?</p> <p>20 A. He -- he is the recruiter.</p> <p>21 Q. I'm sorry.</p> <p>22 A. That's right. In that situation it really comes</p> <p>23 down to the relationship and there's some discretion</p> <p>24 with the recruiter. The recruiter is certainly capable</p> <p>25 as empowered to be able to discuss with the client.</p>	<p>1 look at those engagements that a marketing counterpart</p> <p>2 had with the client. And then, in addition, in joint</p> <p>3 meetings between recruiting and marketing, they commonly</p> <p>4 work together, whether it be for repeat business with an</p> <p>5 existing client or new business with a client, to be</p> <p>6 able to openly discuss what those pendings are. They're</p> <p>7 available reports. They share the reports in terms of</p> <p>8 pending clients, clients that are yet to be pending.</p> <p>9 There are large calendars physically in the office that</p> <p>10 will show each marketer's upcoming 60 days of meetings</p> <p>11 they have scheduled, and so there is a tremendous amount</p> <p>12 of transparency in that process.</p> <p>13 Q. Okay. Let's go back to the -- return to the</p> <p>14 stairstep process of bringing someone in. So they're --</p> <p>15 they're hired. And upon hiring, do they then go through</p> <p>16 a training process?</p> <p>17 A. Yes.</p> <p>18 Q. How long does that training process last?</p> <p>19 A. The initial steps of the training last about</p> <p>20 20 weeks on average. It really goes in tiers at that</p> <p>21 point because once you completed training and let's say</p> <p>22 that that average is 20 weeks, you've completed</p> <p>23 training, you really haven't conducted a tremendous</p> <p>24 number of encounters yet where you've successfully</p> <p>25 placed a physician or successfully secured a contract,</p>

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<p>1 and so it then becomes your -- your direct report's job  2 or your direct manager's job to really be able to  3 complete that training process. Our experience is for a  4 person to be independent and consistently productive on  5 either side is typically a minimum of a year. A year  6 that starts from their hire to that -- that 12-month  7 period. The learning just does not stop at that point.  8 We put them through at least biweekly training during  9 that process to continue to engage them further in the  10 business. Either deeper knowledge about what they've  11 learned in training or things -- health care is a  12 dynamic business. Things are changing every day and so  13 to keep them as updated as possible, a person that  14 oversees them will ride side by side with them on all  15 the new-client visits. If they received a new search to  16 be able to ensure that that's done properly, they will  17 commonly be involved in each closing call with a  18 candidate with an expressed opportunity where they'll be  19 involved in that particular phone call. And so that  20 training process, albeit ongoing, it still remains very  21 intense for the first year.  22 Q. Who's in charge of the training?  23 A. A gentleman named Mike Faye (phonetic).  24 Q. Okay.  25 A. And I say that specifically to that. Mike is</p>	<p>1 can do. It isn't an infinite number of people that can  2 be involved because it's very hands on. If you look at  3 this business, there's no degree, no specific degree,  4 education that people receive outside of our --  5 Q. Right.  6 A. -- our business. And so we have to teach them  7 from scratch.  8 Q. Okay. So before I get to what you teach them,  9 let me make sure that I understand the mechanics.  10 Training classroom portion of it, the first 20 weeks,  11 it's not set up when you hire a single individual, is  12 it? It's ongoing as you're hiring people?  13 A. We try to hire in classes, but certainly will  14 remain flexible on that for quality candidates.  15 Q. So you try to hire a group of people and try to  16 have them all start in the same class?  17 A. Try to.  18 Q. Is that fair? Okay. And then they progress to  19 that 20-week process; is that fair?  20 A. Yes.  21 Q. And so the addition of having to have another  22 person in the class that's already going to be ongoing,  23 does that increase the cost of that class?  24 A. It depends on how many people are involved in  25 that.</p>
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<p>1 responsible for the first 20 weeks, but then makes sure  2 that there's a healthy transition --  3 Q. Okay.  4 A. -- to their new -- new supervisor.  5 Q. Is the 20 weeks done -- is it on-the-job training  6 or is it separate and apart?  7 A. The first portion of it is separate and apart I  8 think. If you look at that first 10 days to two weeks,  9 it's vastly classroom driven, and from that period on  10 really will incur the stages. And a lot of it depends  11 on the ability and how quickly someone learns that  12 process where it can evolve to you might spend 20  13 percent of your time on the telephone, get some  14 experience and come back into a classroom setting. And  15 that typically remains 50/50, I would say two-thirds of  16 the process, and then it may turn where it's more of a  17 70 on the floor getting experience and 30 percent back  18 in training.  19 Q. Is training -- is that training process, the  20 classroom part, is it -- is it constantly ongoing at  21 Merritt Hawkins?  22 A. Well, there are -- as we continue to hire people,  23 there are people at different stages --  24 Q. Okay.  25 A. -- and phases. There's a capacity to what you</p>	<p>1 Q. Let's just say you had to hire someone to replace  2 Larry Gresham and that person had to -- to go through  3 the class process. What additional costs besides those  4 that were already going to be incurred for purposes of  5 that class did Merritt Hawkins incur?  6 A. It -- depending on the class size it could hold  7 them back, I think, but there's -- your question is that  8 as so long the class size wasn't above a reasonable  9 number we wouldn't be hiring an additional trainer or  10 paying overtime for that person, if you will, to work  11 extra.  12 Q. And do you know for anyone who replaced  13 Mr. Gresham, whether or not you busted a class size  14 because of that additional hire?  15 A. I'm not aware of that, no.  16 Q. And so as we sit here today, is it fair to say  17 you're not aware of additional cost other than the  18 normal expense Merritt Hawkins was going to incur  19 because Mr. Gresham left with respect to the training of  20 his replacement?  21 A. Only from the perspective of our objective, as  22 you mentioned earlier, was -- is about growth and being  23 able to add to the size of the team, not having to  24 necessarily replace to the size of the team. Obviously,  25 there's significant issues with that from a financial</p>

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<p>1 perspective, but in terms of training, I can't -- there</p> <p>2 may not have been additional costs.</p> <p>3 Q. Okay. You say may not have been. Are you aware</p> <p>4 as you sit here today -- and you've been designated as</p> <p>5 an expert -- of any additional cost we can point to,</p> <p>6 traceable to Larry Gresham leaving, that was incurred by</p> <p>7 your training department because they had to get someone</p> <p>8 as a replacement for Mr. Gresham?</p> <p>9 A. Only from the perspective of it would -- we</p> <p>10 would've been able to hire just one more additional</p> <p>11 person for that class or just based on our forecast of</p> <p>12 our growth and what our future needs would be if, in</p> <p>13 fact, Gresham was still in his role. From that</p> <p>14 perspective, yes. In terms of the size of the classroom</p> <p>15 and bringing in additional trainers, no.</p> <p>16 Q. Okay. Because we know none of the hiring quotas</p> <p>17 changed because Mr. Gresham left, correct?</p> <p>18 A. We -- you know what, honestly I'm not sure about</p> <p>19 that because when someone transitions, we go back and</p> <p>20 take a look at where the hiring quotas are to be sure</p> <p>21 that we've got sufficient numbers so.</p> <p>22 Q. As you sit here today are you aware if -- if</p> <p>23 Merritt Hawkins increased its quarterly quota for its</p> <p>24 talent acquires because Mr. Gresham left?</p> <p>25 A. No, I'm not.</p>	<p>1 training is not voluntary.</p> <p>2 Q. Okay. When does -- when does the involuntary</p> <p>3 training stop, if you will? How long do you have to be</p> <p>4 there?</p> <p>5 A. It's based on a level of sufficiency.</p> <p>6 Q. Okay.</p> <p>7 A. But there's typically a time frame that coincides</p> <p>8 with that efficiency.</p> <p>9 Q. Had Mr. Gresham stopped with or been relieved of</p> <p>10 involuntary training?</p> <p>11 A. I'm honestly not sure.</p> <p>12 Q. Okay. So he might have still been required to do</p> <p>13 what we'll call the involuntary training; is that</p> <p>14 correct?</p> <p>15 A. He may have.</p> <p>16 Q. Okay. I presumed his replacement, whoever that</p> <p>17 person was, had to do the involuntary training as well?</p> <p>18 A. Oh, yeah, absolutely.</p> <p>19 Q. Okay. So what we don't know is how much of the</p> <p>20 involuntary training Merritt Hawkins did for</p> <p>21 Mr. Gresham's replacement would've had to have been done</p> <p>22 anyway had Mr. Gresham stayed there; is that correct?</p> <p>23 A. The involuntary training if someone has -- if you</p> <p>24 put someone on a team. You have a team size of 10 and</p> <p>25 reduces to nine you had a new team member there that's</p>
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<p>1 Q. Okay. So as we sit here today assuming that the</p> <p>2 quotas stayed the same and Merritt Hawkins met that</p> <p>3 quota we know there were no additional training cost</p> <p>4 because you were going to train those people anyway even</p> <p>5 though Mr. Gresham left, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. All right. So then once they've been</p> <p>8 trained, the individual after the 20 weeks goes to work</p> <p>9 and your testimony is there is still on-the-job training</p> <p>10 being provided to that person --</p> <p>11 A. There is.</p> <p>12 Q. Okay. And that training -- is that training done</p> <p>13 by supervisors or by the training department?</p> <p>14 A. By supervisors.</p> <p>15 Q. Okay. And I presume that that training goes on,</p> <p>16 whether you've been there six weeks or whether you've</p> <p>17 been there six years, that your supervisors are still</p> <p>18 providing on-the-job training; is that correct?</p> <p>19 A. Very different type of -- type of training.</p> <p>20 Q. Understood. Just before you tell me that, I</p> <p>21 mean, in general the training is ongoing for Merritt</p> <p>22 Hawkins employees while they're there for all of it; is</p> <p>23 that correct?</p> <p>24 A. Not that level of training. There's training</p> <p>25 available for people in a voluntary basis. That</p>	<p>1 coming straight from training and know for a fact that</p> <p>2 they're going to have a significant amount of hands-on</p> <p>3 training by one of their leaders. That time takes</p> <p>4 directly away from that leader being able to work on</p> <p>5 behalf of their clients while they're assisting them and</p> <p>6 so you know that new person coming in the team is going</p> <p>7 to absorb and to utilize the resources there.</p> <p>8 Q. How many people typically are on a team?</p> <p>9 A. We break our company into regions. There are</p> <p>10 eight regions. That team size of people in production</p> <p>11 including those coming to the training process could be</p> <p>12 as small as eight to as many as 14 or 15.</p> <p>13 Q. Okay. So Mr. Gresham presumably was part of a</p> <p>14 team somewhere between 8 and 14?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And he leaves and someone else comes in,</p> <p>17 and your testimony is that the director for that team</p> <p>18 would have had to have spent some extra time with a new</p> <p>19 person to replace Mr. Gresham; is that correct?</p> <p>20 A. Significant, yes.</p> <p>21 Q. But nevertheless that team of 8 to 14 as having</p> <p>22 20 to 25 percent turnover in a given year; is that</p> <p>23 correct?</p> <p>24 A. It could be, yes.</p> <p>25 Q. So there's constantly -- let's just say it's a</p>

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<p>1 team of 10. Every year you're replacing anywhere from</p> <p>2 two to three people on average on each team; is that</p> <p>3 right?</p> <p>4 A. Could be, yeah.</p> <p>5 Q. Okay. So the director is constantly spending</p> <p>6 time with new people training them, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And -- and do you know what the cost</p> <p>9 would've been to the director of Mr. Gresham's team from</p> <p>10 having to have extra supervisory time with three new</p> <p>11 people to his team rather than two?</p> <p>12 A. It's proportional. If you had -- it's about the</p> <p>13 time you spend with each person, not so much the group,</p> <p>14 because it's based on -- at that point you're directing</p> <p>15 them based on the experiences they specifically are</p> <p>16 having and where they're on the training process, again,</p> <p>17 their ability to learn and absorb the information. It</p> <p>18 is very much one on one.</p> <p>19 Q. Okay. And are your directors making salary?</p> <p>20 A. That's a portion of our compensation.</p> <p>21 Q. Okay. What's the other portion?</p> <p>22 A. They receive compensation based on their billable</p> <p>23 time. They receive compensation based on their ability</p> <p>24 to secure repeat business, refer candidates to other</p> <p>25 recruiters and those being physician candidates, and of</p>	<p>1 A. You know, there's nothing specific that stuck out</p> <p>2 from the conversation. So he met the average</p> <p>3 expectation is my best estimate.</p> <p>4 Q. Was there any discussions to whether or not</p> <p>5 Mr. Gresham would stick around?</p> <p>6 A. You know, I don't -- I don't recall. I don't</p> <p>7 recall that.</p> <p>8 Q. He had previously worked for Merritt Hawkins,</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And he left Merritt Hawkins to go to work for</p> <p>12 Arthur Gallagher; is that correct?</p> <p>13 MR. VOLNEY: Arthur Marshall.</p> <p>14 MR. TILLOTSON: Arthur Marshall. Sorry,</p> <p>15 John.</p> <p>16 A. That is my understanding. It's been a little</p> <p>17 while. He may have went to go to work somewhere else</p> <p>18 first for a short period of time. I don't know. I</p> <p>19 don't recall that specifically, but in very short order</p> <p>20 he went to work for Arthur Marshall.</p> <p>21 Q. (BY MR. TILLOTSON) Were you involved in any way</p> <p>22 in any dispute between Merritt Hawkins and Arthur</p> <p>23 Marshall over the hiring of Mr. Gresham?</p> <p>24 A. I was.</p> <p>25 Q. Okay. Did Merritt Hawkins complain or bring</p>
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<p>1 course, on the placement of physician candidates.</p> <p>2 Q. Okay. All right. Was Mr. Gresham a good</p> <p>3 employee?</p> <p>4 A. Until he decided to come steal a bunch of</p> <p>5 documents, he seemed fine.</p> <p>6 Q. Was he performing according to your expectations?</p> <p>7 A. I believe he met the minimal expectation.</p> <p>8 Q. Okay. So was he -- was he -- okay. So he had a</p> <p>9 minimal quota, did he not?</p> <p>10 A. He did.</p> <p>11 Q. Do you know what that quota was?</p> <p>12 A. The quota is one a month. One placement a month</p> <p>13 for one candidate.</p> <p>14 Q. Did he get one placement a month on average?</p> <p>15 A. I'm not sure.</p> <p>16 Q. Okay. Was he ever singled out for exemplary</p> <p>17 performance or production?</p> <p>18 A. I'm not aware of it if he was.</p> <p>19 Q. Okay. Do you know -- have you ever seen any of</p> <p>20 his reviews?</p> <p>21 A. I have not.</p> <p>22 Q. Did you talk to his director?</p> <p>23 A. I did.</p> <p>24 Q. Okay. What, if anything, did his director say</p> <p>25 about Mr. Gresham's performance?</p>	<p>1 legal action against Arthur Marshall in connection with</p> <p>2 hiring Mr. Gresham?</p> <p>3 A. As I recall we brought legal action against him.</p> <p>4 Q. By that, I mean, you sued him, right?</p> <p>5 A. It may have been a step in the process. I know</p> <p>6 that we had communicated with him of our dissatisfaction</p> <p>7 with that hiring and it was in breach of his employment</p> <p>8 agreement. I know that we had involved the attorneys.</p> <p>9 I wouldn't want to say for certain that we filed against</p> <p>10 him. My memory believes that we did or came to that</p> <p>11 edge before we reached some type of settlement.</p> <p>12 Q. Okay. Do you remember what the terms of the</p> <p>13 settlement were?</p> <p>14 A. In general, my -- if I recall correctly, it was</p> <p>15 that he had to -- you know what, honestly, I don't</p> <p>16 remember that specifically. I don't want to -- I don't</p> <p>17 want to guess.</p> <p>18 Q. Who would know?</p> <p>19 A. I could find out.</p> <p>20 Q. Okay. I mean, who were the lawyers you used; do</p> <p>21 you remember?</p> <p>22 A. I believe it would've been Nona Walker at that</p> <p>23 time, but again --</p> <p>24 Q. Okay.</p> <p>25 A. -- it's been a few years and we've had a lot of</p>

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<p>1 engagements.</p> <p>2 Q. Sure. Was Arthur Marshall -- is Arthur Marshall</p> <p>3 a competitor of Merritt Hawkins?</p> <p>4 A. They are.</p> <p>5 Q. Did Mr. Gresham go to work for Arthur Marshall</p> <p>6 within a 50-mile radius of his offices at Merritt</p> <p>7 Hawkins?</p> <p>8 A. He did.</p> <p>9 Q. Okay. But nevertheless you reached or Merritt</p> <p>10 Hawkins reached a settlement with Mr. Gresham that</p> <p>11 allowed him to stay at Merritt -- stay at Arthur</p> <p>12 Marshall; is that correct?</p> <p>13 A. I believe that's correct.</p> <p>14 Q. And then he leaves Arthur Marshall and comes back</p> <p>15 to Merritt Hawkins; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Do you know how it is you guys wind up recruiting</p> <p>18 him from Arthur Marshall?</p> <p>19 A. I do not.</p> <p>20 Q. Would it -- do you know if your talent folks</p> <p>21 called your competitors for purposes or tried to --</p> <p>22 A. As a general rule, no.</p> <p>23 Q. Let me finish the question.</p> <p>24 A. Okay.</p> <p>25 Q. Do -- I'm sorry. I didn't mean to interrupt you.</p>	<p>1 about hiring away its employee?</p> <p>2 A. I believe they did.</p> <p>3 Q. Do you know if they filed a lawsuit?</p> <p>4 A. I don't recall.</p> <p>5 Q. How was the matter resolved?</p> <p>6 A. As I recall my position was he was our employee,</p> <p>7 we trained him, we made the investment in bringing him</p> <p>8 from knowing nothing about the business to a proficient</p> <p>9 employee. They had no loss.</p> <p>10 Q. Okay. Do you know if he had signed a noncompete</p> <p>11 at Arthur Marshall?</p> <p>12 A. I believe he did.</p> <p>13 Q. Okay. So at least with respect to its</p> <p>14 ex-employees, Merritt Hawkins doesn't have a problem</p> <p>15 with hiring individuals who may be bound by a noncompete</p> <p>16 with a competitor; is that fair?</p> <p>17 A. No.</p> <p>18 Q. Why did -- why did you hire Mr. Gresham from</p> <p>19 Arthur Marshall if he had a noncompete with Arthur</p> <p>20 Marshall?</p> <p>21 A. It would've been one or two reasons. I don't</p> <p>22 remember their -- Arthur Marshall's contracts</p> <p>23 specifically, but in the very rare case when we do bring</p> <p>24 someone on board from a competitor, our agenda is to</p> <p>25 review that agreement and to make sure that we're</p>
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<p>1 A. That's all right.</p> <p>2 Q. She's -- you know, she's taking down everything</p> <p>3 we say. If we talk at the same time, she can't do it.</p> <p>4 So if I interrupt you just say so so I can let you</p> <p>5 finish. Thank you. Do you know if your talent people</p> <p>6 either solicit or look to your competitors for purposes</p> <p>7 of hiring potential employees from Merritt Hawkins?</p> <p>8 A. As a general rule they do not.</p> <p>9 Q. Okay. But from time to time it happens?</p> <p>10 A. Typically that only occurs if someone from a</p> <p>11 competitor reaches out to our talent acquisition</p> <p>12 department.</p> <p>13 Q. Okay. So help me. I'm stuck here. Can I please</p> <p>14 come to work for you?</p> <p>15 A. Potentially.</p> <p>16 Q. Okay. And do you know if it was Mr. Gresham that</p> <p>17 asked to come back to Merritt Hawkins or was it Merritt</p> <p>18 Hawkins that reached out to Mr. Gresham?</p> <p>19 A. I do not know that.</p> <p>20 Q. Okay. But nevertheless he comes back in the</p> <p>21 interviewing process, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And goes back to work for Merritt Hawkins?</p> <p>24 A. That is correct.</p> <p>25 Q. Did Arthur Marshall complain to Merritt Hawkins</p>	<p>1 abiding by it and so the potential outcomes with</p> <p>2 Mr. Gresham would have been either one. Our opinion was</p> <p>3 we were abiding by the agreement or two, it was invalid</p> <p>4 because of the fact that we referred our original</p> <p>5 agreement and that was the one that we had focused on</p> <p>6 the fact that he had made that commitment to Merritt</p> <p>7 Hawkins and he was still bound by that.</p> <p>8 Q. Okay. Do you know how long he was gone from</p> <p>9 Merritt Hawkins from the departure from the first time</p> <p>10 to being rehired the second time?</p> <p>11 A. I don't recall specifically.</p> <p>12 Q. Okay. He was at Merritt Hawkins, what, about a</p> <p>13 year before he left?</p> <p>14 A. The first time?</p> <p>15 Q. Second time.</p> <p>16 A. The second time that sounds about right.</p> <p>17 Q. Okay. So at least from the period we know he's</p> <p>18 quit Merritt Hawkins twice and quit Arthur Marshall</p> <p>19 once; is that right?</p> <p>20 A. Yes, that's my understanding.</p> <p>21 Q. Did you -- did Merritt Hawkins honestly have a</p> <p>22 reasonable expectation that Mr. Gresham was going to</p> <p>23 stay with you at Merritt Hawkins for any significant</p> <p>24 length of time?</p> <p>25 A. Yes.</p>

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<p>1 Q. Okay. Now, I want to focus for a minute on -- on</p> <p>2 your designation as an expert in this case. You -- you</p> <p>3 are aware that you've been designated as an expert,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. When is it you first began work on your</p> <p>7 expert opinions in this case?</p> <p>8 A. Be somewhere in the last -- as it pertains</p> <p>9 specifically to the Gresham case, I'd say probably in</p> <p>10 the last 60 to 90 days.</p> <p>11 MR. TILLOTSON: Okay. I'm going to have</p> <p>12 this marked as the next exhibit. Sorry.</p> <p>13 (Exhibit Number 114 marked.)</p> <p>14 Q. (BY MR. TILLOTSON) I'm going to show you what</p> <p>15 we're marking as Exhibit 114 and ask to see if you can</p> <p>16 identify that. All right. Do you recognize Exhibit 114</p> <p>17 as a designation of experts identifying you as a</p> <p>18 non-retained expert?</p> <p>19 A. I do.</p> <p>20 Q. Okay. Who approached you about serving as an</p> <p>21 expert witness in this case?</p> <p>22 A. I'm trying to remember if it would have been</p> <p>23 in-house counsel or if it would've been Mr. Colao.</p> <p>24 MR. COLAO: And just -- and just a caution.</p> <p>25 I don't think Mr. Tillotson is asking you for anything</p>	<p>1 expert work, if any?</p> <p>2 A. At that point I would've been involved in that</p> <p>3 process in terms of determining the impact of</p> <p>4 Mr. Gresham's breach of his agreement. We would've</p> <p>5 worked either together or with some of my other team</p> <p>6 members to determine the financial impact of that</p> <p>7 departure would be cost of training, et cetera.</p> <p>8 Q. Okay. Did you make the decision or authorize</p> <p>9 Merritt Hawkins to file the lawsuit in this case in the</p> <p>10 first instance?</p> <p>11 A. Yes.</p> <p>12 Q. What role, if any, did the CEO of AMN have in</p> <p>13 that decision?</p> <p>14 A. I'm not aware of her involvement in that.</p> <p>15 Q. Did you have to ask her or seek authorization</p> <p>16 from her before the lawsuit was filed?</p> <p>17 A. No.</p> <p>18 Q. Was she aware the lawsuit was going to be filed?</p> <p>19 A. I don't know.</p> <p>20 Q. You are aware that Staff Care is suing Consilium</p> <p>21 and others, correct?</p> <p>22 A. I have heard that, yes.</p> <p>23 Q. Were you aware of that lawsuit before Merritt</p> <p>24 Hawkins filed this lawsuit?</p> <p>25 A. Against Gresham?</p>
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<p>1 you may have discussed with your lawyers, but obviously,</p> <p>2 the substance of any communications with your lawyers</p> <p>3 are privileged. If you want to tell him you were</p> <p>4 approached by the lawyers, that's okay, but don't go</p> <p>5 into any substance of anything you said.</p> <p>6 Q. (BY MR. TILLOTSON) Okay. So just -- just so I</p> <p>7 understand you -- you were -- you were -- were you asked</p> <p>8 by the lawyers to serve as an expert in this case?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Were you given a particular topic or</p> <p>11 topics on which they wanted you to serve as an expert?</p> <p>12 A. We would have certainly had dialogue about the</p> <p>13 merits of the case and where we stood in this.</p> <p>14 Q. Okay.</p> <p>15 A. I think it's very fair to say that I would've</p> <p>16 participated as much of -- as anything in terms of</p> <p>17 determining what those -- what those topics were to</p> <p>18 which I was testifying and serving as an expert.</p> <p>19 Q. Okay. Because you're identified on certain</p> <p>20 topics, so I'm just trying to find out was it your idea,</p> <p>21 I will testify on these or did your lawyer say, will you</p> <p>22 testify on these or some mix of those two?</p> <p>23 A. A mix of those two. I mean, they would approach</p> <p>24 me to say, do you want to serve as an expert.</p> <p>25 Q. What materials were you given to help you do your</p>	<p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you've retained the same counsel as</p> <p>4 Staff Care, correct?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. You mentioned you compete against Staff</p> <p>7 Care. Does Merritt Hawkins ever hire anyone from Staff</p> <p>8 Care to come work for Merritt Hawkins?</p> <p>9 A. Yes, we do.</p> <p>10 Q. How often does that happen?</p> <p>11 A. Maybe a couple of times a year. That's certainly</p> <p>12 a guess.</p> <p>13 Q. Does Staff Care sue you guys over that?</p> <p>14 A. No, they do not.</p> <p>15 Q. Well, the Staff Care people to your knowledge</p> <p>16 violating their noncompetes when they come to work for</p> <p>17 Merritt Hawkins?</p> <p>18 A. No. They're all part of the same company --</p> <p>19 owned by the same company.</p> <p>20 Q. Okay. So even though you say Staff Care and</p> <p>21 Merritt Hawkins compete, right?</p> <p>22 A. Yes.</p> <p>23 Q. And they're in the same business; is that right?</p> <p>24 A. Similar businesses, yes.</p> <p>25 Q. Okay. It is not a violation of a Staff Care</p>

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<p>1 noncompete in your mind to come work for Merritt Hawkins</p> <p>2 because you have the same parent company?</p> <p>3 A. We -- we encourage across AMN for people to be</p> <p>4 able to work in different organizations and -- and</p> <p>5 different businesses.</p> <p>6 Q. Do Merritt Hawkins and Staff Care share their</p> <p>7 database or information about doctors and providers and</p> <p>8 hospitals?</p> <p>9 A. We do.</p> <p>10 Q. Okay. So Staff Care people have access to the</p> <p>11 Merritt Hawkins information?</p> <p>12 A. In general, yes.</p> <p>13 Q. So a Staff Care employee would have access to the</p> <p>14 notes that might have been entered by Mr. Gresham about</p> <p>15 a particular client?</p> <p>16 A. There is some limitation to that, and I'm not</p> <p>17 exactly sure what that limitation is. They do have</p> <p>18 access to the same candidates, but there -- there is a</p> <p>19 limitation. The information shows in a different</p> <p>20 format.</p> <p>21 Q. Okay.</p> <p>22 A. So I don't know that Merritt Hawkins knows</p> <p>23 properly.</p> <p>24 Q. Okay. So whatever Merritt Hawkins does to</p> <p>25 protect its confidential information from outsiders,</p>	<p>1 incurred from the defendant Bowden and Consilium. Do</p> <p>2 you see that?</p> <p>3 A. I do.</p> <p>4 Q. And you seem to feel Gresham terminated his</p> <p>5 employment with MHA. Which amount is now less than</p> <p>6 \$70,000. Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. First question is: I take it that these</p> <p>9 damages are based upon your belief that Mr. Bowden and</p> <p>10 Consilium wrongfully induced defendant Gresham to quit</p> <p>11 MHA and come to work for Consilium; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Because if Mr. Gresham just decided to quit for</p> <p>14 whatever reasons, then that wouldn't be the fault of</p> <p>15 Mr. Bowden or Consilium, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Now, you say -- the first one is the</p> <p>18 amount MHA incurred to train a new employee following</p> <p>19 his resignation, which you say is approximately \$45,000;</p> <p>20 do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And that you've calculated based upon a 20-week</p> <p>23 training time and an annual starting salary of \$45,000;</p> <p>24 do you see that?</p> <p>25 A. I do.</p>
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<p>1 Staff Care has access to at least some aspects of that</p> <p>2 information; is that correct?</p> <p>3 A. Some.</p> <p>4 Q. Okay. All right. I want to talk to you then</p> <p>5 about your designation here. What guidance, if any,</p> <p>6 were you given by the lawyers in connection with</p> <p>7 developing these opinions?</p> <p>8 A. More or less asked in terms of what I was</p> <p>9 comfortable being an expert about.</p> <p>10 Q. Okay. Were you given any instructions by the</p> <p>11 lawyers or other disclosures, here's how we want you to</p> <p>12 calculate damages, or did --</p> <p>13 A. No.</p> <p>14 Q. -- you come up with this yourself?</p> <p>15 A. We came up with this with a combination of myself</p> <p>16 and some of my team members.</p> <p>17 Q. Okay. Who were the team members that worked on</p> <p>18 this?</p> <p>19 A. Principally it would've been Mike Faye.</p> <p>20 Q. Okay.</p> <p>21 A. I mentioned earlier --</p> <p>22 Q. Right.</p> <p>23 A. -- he was in charge of our training.</p> <p>24 Q. Okay. All right. I'll ask you to turn to page</p> <p>25 four where you identified the damages plaintiffs</p>	<p>1 Q. Okay. Explain to me how you came up with this</p> <p>2 calculation.</p> <p>3 A. This calculation came up with the fact of we</p> <p>4 looked at the cost of the employee and their salary,</p> <p>5 direct overhead and benefits. The additional -- the</p> <p>6 time specifically carved out for these folks from Mike</p> <p>7 Faye over that 20-week period and their direct</p> <p>8 supervisor during that 20-week period. As I mentioned,</p> <p>9 that direct supervisor is involved after the 20 weeks,</p> <p>10 but they're also involved intimately before the</p> <p>11 20 weeks. So calculating on a very conservative basis,</p> <p>12 that's what we saw the cost of that being.</p> <p>13 Q. Okay. Let me take you through the different</p> <p>14 components. The first component: Let's assume that</p> <p>15 someone starts as a -- 20-week training period and is</p> <p>16 being hired at a \$40,000-a-year annual salary; is that</p> <p>17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And -- and is that the general average</p> <p>20 annual starting salary for a new hire?</p> <p>21 A. It is.</p> <p>22 Q. Okay. So the first thing is that you assume that</p> <p>23 for 20 weeks you're paying salary to someone that's not</p> <p>24 producing any income; is that correct?</p> <p>25 A. Correct. That is correct.</p>

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<p>1 Q. And the component of that is 15,384; is that</p> <p>2 right?</p> <p>3 A. That's right.</p> <p>4 Q. And that's a cost you guys incur on every</p> <p>5 trainee; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. And then number two is the trainee's</p> <p>8 overhead cost, which is \$3,084 -- \$3,846; do you see</p> <p>9 that?</p> <p>10 A. I do.</p> <p>11 Q. Okay. How is that calculated?</p> <p>12 A. That would've been a -- if we looked at the --</p> <p>13 essence from our finance department determining what the</p> <p>14 average cost of overhead and benefits for any -- an</p> <p>15 individual is going to be in the 25 percent range of</p> <p>16 their salary and that's where that calculation was made</p> <p>17 from.</p> <p>18 Q. Okay. What documents did your financial people</p> <p>19 look at; do you know?</p> <p>20 A. I'd have to assume.</p> <p>21 Q. Because you didn't do this?</p> <p>22 A. I asked for information from our finance team.</p> <p>23 Q. Who did you ask?</p> <p>24 A. Robert Easley who's my director of finance.</p> <p>25 Q. Okay. And did he just give you a number or did</p>	<p>1 A. That's a common number, yes.</p> <p>2 Q. Okay. And -- and do you know, does that include</p> <p>3 things like fixed or cost like -- like operation cost</p> <p>4 like electricity and running the shop and just their</p> <p>5 proportional share of that?</p> <p>6 A. The majority of that cost, and so I understand,</p> <p>7 would've been based around the specific cost of them for</p> <p>8 benefits, the cost of any employee's FICA, those types</p> <p>9 of things, but it could have included some of those</p> <p>10 fixed costs as well.</p> <p>11 Q. Okay. All right. Then the third one is: MHA's</p> <p>12 employees typed -- training new employee \$125 an hour 10</p> <p>13 hours a week equals \$25,000. Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. What is that a reflection of?</p> <p>16 A. That is a reflection of their direct supervisor's</p> <p>17 time spent away from their clients and away from the</p> <p>18 focus of their business and spending time with this</p> <p>19 person as an individual to review their progress in</p> <p>20 training and to address questions they may have about</p> <p>21 the training process or experiences they had on the</p> <p>22 phone with candidates that may be willing to -- to</p> <p>23 discuss those interactions in more detail.</p> <p>24 Q. Okay.</p> <p>25 A. And just to guide them through that process.</p>
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<p>1 he give you documents?</p> <p>2 A. He likely would've showed me documents and --</p> <p>3 where he generated the number from.</p> <p>4 Q. Okay. What documents do you remember him showing</p> <p>5 you?</p> <p>6 A. I don't recall.</p> <p>7 Q. Okay. And did he prepare a spreadsheet or</p> <p>8 anything like that for you?</p> <p>9 A. Likely not. It would've been not something that</p> <p>10 required that level of complexity.</p> <p>11 Q. Okay. But he did show you documents and you</p> <p>12 don't recall what those are; is that right?</p> <p>13 A. That's right.</p> <p>14 Q. And you don't have possession of them today?</p> <p>15 A. I do not.</p> <p>16 Q. Okay. Did you provide those documents to your</p> <p>17 lawyers?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Okay. But nevertheless those documents formed</p> <p>20 the based for coming up with this \$3,846 figure; is that</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And that's just simply a mathematical</p> <p>24 calculation of what does your finance guy think the</p> <p>25 average overhead/benefits cost is to each employee?</p>	<p>1 Q. Okay. So where does the \$125 an hour figure come</p> <p>2 from?</p> <p>3 A. That is the amounts they bill for their time.</p> <p>4 Q. Okay. When you say they bill, they actually</p> <p>5 write down they spent one hour training Mr. X?</p> <p>6 A. What it would be is when a consultant bills their</p> <p>7 time to a client, they will bill at that rate. And so</p> <p>8 at this time is time away from there where they weren't</p> <p>9 allowed to bill for a client where we -- that's the</p> <p>10 opportunity cost.</p> <p>11 Q. Okay. You don't actually -- Merritt Hawkins</p> <p>12 doesn't actually pay them \$125 an hour?</p> <p>13 A. No, we do not.</p> <p>14 Q. Okay. Do you pay them anything for that?</p> <p>15 A. Not directly. That's part of their process of</p> <p>16 the manager training. What it does is it pulls them out</p> <p>17 of production, if you will, where they're not -- they're</p> <p>18 not in the position to bill their clients for those</p> <p>19 times, and so it's a cost to the company because they</p> <p>20 lost opportunity.</p> <p>21 Q. Okay. And do we know that Mr. Gresham's</p> <p>22 supervisor would've had 10 hours a week from 20 weeks</p> <p>23 that he could've billed to a specific client or clients</p> <p>24 during this time period?</p> <p>25 A. Very likely.</p>

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<p>1 Q. Okay. So very likely you haven't looked to see</p> <p>2 at his schedule what he billed and which clients he</p> <p>3 didn't do work for?</p> <p>4 A. I did not.</p> <p>5 Q. Okay. And do we even know, did Mr. Gresham's</p> <p>6 replacement go to Mr. Gresham direct director, or was it</p> <p>7 a one for one, whoever replaced Mr. Gresham in fact went</p> <p>8 to the same team?</p> <p>9 A. It went to the same team. I don't know if it was</p> <p>10 the same individual that would have been over AMN.</p> <p>11 Q. Okay. So we have no idea who the individual is</p> <p>12 that might have overseen Mr. Gresham's?</p> <p>13 A. At a vice president level, yes. If there was a</p> <p>14 director involved below there, I'm not sure.</p> <p>15 Q. Okay. So we don't really know what the schedule</p> <p>16 was of the individual director through Mr. Gresham's</p> <p>17 replacement because we don't know who that person is as</p> <p>18 we sit here today?</p> <p>19 A. That's correct.</p> <p>20 Q. So we have no idea during that 20-week time</p> <p>21 period, we don't know if in fact that director had</p> <p>22 sufficient client business that he could've built to,</p> <p>23 but gave that up to train and work with Mr. Gresham's</p> <p>24 replacement?</p> <p>25 A. We can make a fair assumption that they did.</p>	<p>1 when you're hiring, correct?</p> <p>2 A. Well, I will. As you look at the individual</p> <p>3 teams. In this case, the team that Mr. Gresham worked</p> <p>4 for dropping from whatever the team size was at the</p> <p>5 time, 10 to nine, very specific responsibilities to</p> <p>6 focus on making sure you have the appropriate head count</p> <p>7 in place to generate the revenue that they need. I look</p> <p>8 at it obviously, on a more global basis.</p> <p>9 Q. Okay. Okay. What I'm asking is: We can't</p> <p>10 really trace Mr. Gresham's departure to any particular</p> <p>11 employee, so we can figure out how well that employee</p> <p>12 did vis-a-vis Mr. Gresham's departure, correct?</p> <p>13 A. Correct, it'd be difficult to do.</p> <p>14 Q. Okay. And -- and this \$120 -- or 25,000 figure</p> <p>15 you have here is really an opportunity cost, not an</p> <p>16 out-of-pocket cost, correct?</p> <p>17 A. Correct.</p> <p>18 Q. You're making the assumption that a director</p> <p>19 somewhere out there had to spend 200 more hours training</p> <p>20 someone because Mr. Gresham left, correct?</p> <p>21 A. Absolutely, yes.</p> <p>22 Q. And you're therefore assuming that that person</p> <p>23 would have billed 200 hours to a client during that same</p> <p>24 time period, correct?</p> <p>25 A. Yes, we are.</p>
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<p>1 Based on the success of the region and where they were</p> <p>2 in terms of that revenue line item and the revenue that</p> <p>3 was generated for their hours and the way we distributed</p> <p>4 accounts to make sure that everyone has enough to be</p> <p>5 staying busy during that period of time.</p> <p>6 Q. Who was Mr. Gresham's replacement; do we know?</p> <p>7 A. We didn't look at it as a replacement as that</p> <p>8 individual. This team was, again, as I look at it,</p> <p>9 globally for the growth that we have as an organization</p> <p>10 it's -- it's about an oversize of a team to be able to</p> <p>11 grow from, let's say, eight to 10 or to 12 at that point</p> <p>12 in time. So that person wouldn't necessarily stepped in</p> <p>13 and just been his exact replacement to take over his</p> <p>14 exact account load. They wouldn't have been prepared to</p> <p>15 do that. They were too young in the business.</p> <p>16 Q. Well, do we -- do we know if in fact Merritt</p> <p>17 Hawkins even wound up hiring a replacement for</p> <p>18 Mr. Gresham?</p> <p>19 A. Well, certainly that would have been part of our</p> <p>20 standard process. If someone believes, you want to be</p> <p>21 sure that you've got the appropriate training class in</p> <p>22 place to be able to fulfill that role.</p> <p>23 Q. But my understanding now from -- from you as you</p> <p>24 explain this is you don't really look at -- on that</p> <p>25 individual as the basis. You have quarterly quotas for</p>	<p>1 Q. But we don't know who that particular director</p> <p>2 was, right?</p> <p>3 A. Right.</p> <p>4 Q. We don't know what the director's schedule during</p> <p>5 that time period was, correct?</p> <p>6 A. Correct.</p> <p>7 Q. We don't know if the director had the business</p> <p>8 necessary to bill those 200 hours, correct?</p> <p>9 A. We can certainly assume that they did.</p> <p>10 Q. Right. We can assume, but what I'm asking for is</p> <p>11 a factual matter. You don't -- you don't know?</p> <p>12 A. Correct.</p> <p>13 Q. And last, we don't even know if in fact there was</p> <p>14 an individual who was hired to directly replace</p> <p>15 Mr. Gresham as opposed to your quarterly hiring,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. I now want to focus on part B which is the</p> <p>19 lost profits portion of it. That you identify as a</p> <p>20 figure of \$30,684; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Tell me how you calculated that number.</p> <p>23 A. Well, this calculation was generated to look at</p> <p>24 the prior 12 months that Mr. Gresham was part of the</p> <p>25 organization or part of that team and then going forward</p>

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<p>1 12 months and the fact that that team -- we did add an</p> <p>2 additional person to that team that would have in</p> <p>3 essence from a global perspective replaced that head</p> <p>4 count number, and the difference in profitability during</p> <p>5 that period was the 30,684. I will tell you I think as</p> <p>6 I looked at this upon further reflection, I believe this</p> <p>7 is a far insufficient number.</p> <p>8 Q. Okay. So let me first understand that I know the</p> <p>9 math.</p> <p>10 A. Okay.</p> <p>11 Q. I'll reference you to Exhibit F. Is -- is -- if</p> <p>12 you'll take a look, if you will, on Exhibit F. There'</p> <p>13 two categories: One listed for Gresham. One listed for</p> <p>14 Wilmeth. Who is Wilmeth?</p> <p>15 A. She is a member of that team that joined the team</p> <p>16 after Gresham left, I believe.</p> <p>17 Q. Okay. And do you know when she joined?</p> <p>18 A. I do not know specifically.</p> <p>19 Q. Okay. She starts off in September of zero. Do</p> <p>20 you think she joined in September or is that just a</p> <p>21 placeholder?</p> <p>22 A. I'm not sure.</p> <p>23 Q. Okay. And then for Gresham you've got an EBIDDDA</p> <p>24 number, correct?</p> <p>25 MR. TILLOTSON: E-B-I-D-D-D-A, all caps.</p>	<p>1 Q. Okay. So there's an EBIDDDA for the region and</p> <p>2 then you divided that EBIDDDA by what?</p> <p>3 A. By the number, if I recall correctly, the number</p> <p>4 of recruiters were part of the team at that point.</p> <p>5 Q. Okay. With the -- with the idea being each</p> <p>6 recruiter would have a proportionate share of having</p> <p>7 generated the EBIDDDA, correct?</p> <p>8 A. Correct.</p> <p>9 Q. But we know that's not true because they perform</p> <p>10 at different levels, right?</p> <p>11 A. It's an average contribution, correct.</p> <p>12 Q. Right. But some are very good employees and some</p> <p>13 are not-so-good employees contributing to different</p> <p>14 levels, correct?</p> <p>15 A. Correct.</p> <p>16 Q. What's the average EBIDDDA someone would generate</p> <p>17 if they met the minimum quota of one placement per</p> <p>18 month; do you know?</p> <p>19 A. I do not.</p> <p>20 Q. Have you compared what the EBIDDDA would be for</p> <p>21 someone who generated on average one placement a month</p> <p>22 during this time period in your average EBIDDDA figures?</p> <p>23 A. I have -- I do feel comfortable looking at this.</p> <p>24 Average recruiter is going to generate somewhere between</p> <p>25 45 and \$65,000 a month and on average our regions</p>
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<p>1 A. Correct.</p> <p>2 Q. (BY MR. TILLOTSON) And how is that EBIDDDA</p> <p>3 number calculated?</p> <p>4 A. My understanding is the EBIDDDA in this case is</p> <p>5 the EBIDDDA per recruiter. If you took a total EBIDDDA</p> <p>6 of the team and divided it by the number of recruiters</p> <p>7 on the team, you would generate this number.</p> <p>8 Q. Okay. What -- what's the number that we're</p> <p>9 starting off with that we're dividing by?</p> <p>10 A. The number you start off with is the EBIDDDA</p> <p>11 that's the region he was involved with.</p> <p>12 Q. Okay. And so I take it you have financial</p> <p>13 documents that break down EBIDDDA by region?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And did you look at those documents to</p> <p>16 prepare this?</p> <p>17 A. I did.</p> <p>18 Q. And are you relying on them to give us these</p> <p>19 numbers?</p> <p>20 A. I am.</p> <p>21 Q. Okay. Did you give those documents to your</p> <p>22 lawyers?</p> <p>23 A. Don't believe so.</p> <p>24 Q. Okay. Do you have them with you here today?</p> <p>25 A. I do not.</p>	<p>1 produce an EBIDDDA at about 20 percent -- 20 percent</p> <p>2 each point. It could be as high as 30, as low as middle</p> <p>3 'teens.</p> <p>4 Q. Okay. So -- so you're telling me that the</p> <p>5 average recruiter would generate 45 to 65,000 a month in</p> <p>6 -- in total revenue?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And your EBIDDDA figure off that is somewhere</p> <p>9 around 20 to maybe as high as 30 percent?</p> <p>10 A. Yes.</p> <p>11 Q. Is that right?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Okay. Now, that average figure of 45 to 65, do</p> <p>14 you know how that compares with what Gresham was doing</p> <p>15 in realtime?</p> <p>16 A. I don't. I don't. I'm obviously -- I'm</p> <p>17 obviously --</p> <p>18 Q. Is that information available? I mean, could</p> <p>19 we see what you could do?</p> <p>20 A. Yes, we could -- we could locate that.</p> <p>21 Q. Okay. So for that --</p> <p>22 MR. COLAO: Hey Jeff, I'm not trying to cut</p> <p>23 you off. I've got to use the bathroom whenever you --</p> <p>24 I'm not going to cut you off. Just tell me when we can</p> <p>25 do it.</p>

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<p>1 THE WITNESS: Second that.</p> <p>2 MR. TILLOTSON: All right. The first rule</p> <p>3 is if you ever need to take a break, particularly for</p> <p>4 the bathroom, just say so. So why don't we --</p> <p>5 THE WITNESS: Is that okay?</p> <p>6 MR. TILLOTSON: Sure.</p> <p>7 THE VIDEOGRAPHER: Going off the record.</p> <p>8 It's 10:59 a.m.</p> <p>9 (Break taken from 10:59 a.m. to 11:20 a.m.)</p> <p>10 THE VIDEOGRAPHER: Back on the record. It's</p> <p>11 11:20 a.m.</p> <p>12 Q. (BY MR. TILLOTSON) Okay. Since we were looking</p> <p>13 at Exhibit F to your expert disclosures right before we</p> <p>14 finished -- and I just want to make sure our -- the last</p> <p>15 series of questions. The figures listed for</p> <p>16 Mr. Gresham, the monthly figures is just the average</p> <p>17 monthly EBIDDDA for the Heartland region divided by the</p> <p>18 number of recruiters in the Heartland region; is that</p> <p>19 correct?</p> <p>20 A. It is not correct. I apologize. That's my</p> <p>21 mistake. I took a look at my notes and this calculation</p> <p>22 was generated by looking at Mr. Gresham's monthly</p> <p>23 billings multiplied by the EBIDDDA percentage of his</p> <p>24 particular region. That's the smallest profit center</p> <p>25 that we calculate as an organization. So if he had</p>	<p>1 A. It does.</p> <p>2 Q. Were you using each month's of it all or were you</p> <p>3 using a global --</p> <p>4 A. That would've been month by month.</p> <p>5 Q. Okay. And who -- who would have performed these</p> <p>6 calculations?</p> <p>7 A. That would have been performed by a member of our</p> <p>8 finance team.</p> <p>9 Q. Okay. Not you, but someone else?</p> <p>10 A. Correct.</p> <p>11 Q. That person's name is?</p> <p>12 A. That would have likely been done by Robert</p> <p>13 Easley.</p> <p>14 Q. Okay. What format was this information presented</p> <p>15 to you?</p> <p>16 A. I don't recall specifically. Likely those --</p> <p>17 those reports typically come to me in an Excel format.</p> <p>18 Q. Right, but the chart we see here today, who</p> <p>19 prepared this chart?</p> <p>20 A. That would be prepared by my finance team or</p> <p>21 Robert.</p> <p>22 Q. Okay. At your direction?</p> <p>23 A. Correct.</p> <p>24 Q. But you didn't prepare the chart?</p> <p>25 A. No, I did not.</p>
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<p>1 \$50,000 of billing that month and his team, the</p> <p>2 Heartland team, had 20 percent EBIDDDA, it would be</p> <p>3 \$10,000. And then is why you look down to Ms. Wilmeth</p> <p>4 and compare that she's starting off with zero because</p> <p>5 she didn't generate anything in her her first months and</p> <p>6 then we see the numbers begin to build over that -- over</p> <p>7 that period of time. Interestingly enough, as you look</p> <p>8 at those numbers with the exception of the spike there</p> <p>9 mid year, it took about 10 to 12 months for her to get</p> <p>10 back to that full ramping of being, you know, as</p> <p>11 successful as someone like Mr. Gresham who had been in a</p> <p>12 territorial chair for a year or longer. So I apologize</p> <p>13 for that.</p> <p>14 Q. Okay. So -- it's his actual -- Mr. Gresham's</p> <p>15 actual revenue?</p> <p>16 A. Correct.</p> <p>17 Q. But you're using the --</p> <p>18 MR. VOLNEY: Billing stubs.</p> <p>19 Q. (BY MR. TILLOTSON) -- billings, but you're using</p> <p>20 the gross billings that you would have on a particular</p> <p>21 month times the average EBIDDDA percentage for his</p> <p>22 region?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And is that -- EBIDDDA, does it vary on a</p> <p>25 month-to-month basis?</p>	<p>1 Q. And -- and have you even the backup information</p> <p>2 that was used to prepare the chart?</p> <p>3 A. Now to reflect back, I have.</p> <p>4 Q. Okay. And you had mentioned earlier to correct</p> <p>5 yourself you said looked at your notes. Which notes are</p> <p>6 you referring to?</p> <p>7 A. Notes I have -- that I had in a separate file.</p> <p>8 Q. Okay. Are those notes here?</p> <p>9 A. I looked at them online. I don't have them with</p> <p>10 me.</p> <p>11 Q. Okay. So you went -- you went on a computer</p> <p>12 while during the break and looked at notes online?</p> <p>13 A. I did.</p> <p>14 Q. Okay. And are they handwritten notes, are they</p> <p>15 finance notes? What are they?</p> <p>16 A. It's -- it would've been -- actually it would've</p> <p>17 been -- it would've been the format. I'm looking back</p> <p>18 from my notes. As I looked on there, those would've</p> <p>19 been just -- they actually would've been the spreadsheet</p> <p>20 from -- from finance.</p> <p>21 Q. Okay. What -- I'm confused because you used</p> <p>22 different terminology. Why don't you just tell me what</p> <p>23 happened during the break that allowed you to figure you</p> <p>24 had given mistaken testimony about this? What did you</p> <p>25 look at? Who did you talk to?</p>

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<p>1 A. We talked to members of our legal department in 2 San Diego. 3 Q. Okay. 4 A. To clarify how we had generated these. Honestly, 5 as you looked at Wilmeth is where it began to not make 6 sense on the average. 7 Q. Okay. Who in San Diego legal did you talk to? 8 A. Barakat. I don't remember her last name. 9 Q. Barakat? 10 A. Barakat. 11 Q. Okay. Do you know who she is? 12 A. I do. 13 Q. Who is she? 14 A. She's a member of the legal team in San Diego. 15 Q. What -- like for AMN or for -- 16 A. Yeah, for AMN corporate. 17 Q. So AMN corporate lawyers. Okay. And why did you 18 call her? 19 A. Because as I looked at these numbers specifically 20 with Wilmeth, it wasn't making sense. It was an average 21 that I had recalled. 22 Q. Okay. Why does -- why does -- why does the 23 individual at AMN, which is a separate company, know 24 about these particular numbers here in Exhibit F? 25 A. Well, they're our parent company, they're the</p>	<p>1 that's your question. 2 Q. Okay. Let's -- let's start with the beginning. 3 Who -- when -- when -- did AMN's lawyers ask you to come 4 up with some damages numbers in this case? 5 A. I don't recall if it would've been them directly 6 or if it would've been a combination of our -- our 7 counsel and in-house or not. I don't recall that. 8 Q. Okay. So you don't remember who actually 9 approached you about providing damages calculations in 10 this case? 11 A. Not specifically. 12 Q. It might have been your lawyers in this case 13 Mr. Colao, right? 14 A. Could have been. 15 Q. Might have been lawyers for your parent company, 16 AMN? 17 A. Could have been. 18 Q. Okay. Is AMN's in-house lawyers also 19 representing Merritt Hawkins in this case? 20 A. I don't know what you mean by representing. I 21 mean, there's attorneys that we do work with. 22 They're -- 23 Q. Okay. 24 A. They're at our access. 25 Q. Okay. And then the calculations we look at here</p>
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<p>1 owner of Merritt Hawkins. 2 Q. But when I asked you earlier who provided you 3 this information you told me it was members of your 4 finance team. You didn't mention anyone from AMN. What 5 role did AMN legal department play in preparing these 6 calculations? 7 A. They would not have prepared in the calculations, 8 but they would have been aware of the documents. 9 Q. How? 10 A. Assuming finance would've given them the copy. 11 Q. How did you know to call them if you don't know 12 how they -- 13 A. Seemed like a good place to start. 14 Q. So randomly during the break you decided to call 15 AMN legal department to find out about calculations done 16 by your finance department? 17 A. Yes. 18 Q. Okay. And you don't remember the full name of 19 Barakat. How did -- how did you know to call her? 20 A. I work with her on an ongoing basis. She has a 21 very unique last name I just can't recall it. 22 Q. Okay. And did -- did AMN's lawyers prepare these 23 calculations that we're looking at here in Exhibit F? 24 A. Well, we would've provided spreadsheets to show 25 what these calculations were. I didn't type this if</p>	<p>1 as Exhibit F, the chart we see, that was prepared by 2 whom? 3 A. The final chart just like exactly what you're 4 seeing? 5 Q. Yes. 6 A. I do not know. 7 Q. Who prepared the initial charts? 8 A. Those would have been prepared by our finance 9 team. 10 Q. Okay. But you don't know who did this final 11 chart? 12 A. I do not. 13 Q. And was AMN's lawyers in California involved in 14 the preparation of the various iterations of this chart? 15 A. I don't know. 16 Q. Okay. Did you have any involvement in it? 17 A. I was involved providing that data. 18 Q. Okay. Providing that data to whom? 19 A. Would've provided that to -- to Dykema, 20 Mr. Colao. 21 Q. Where are the prior iterations of this chart? 22 A. They're back in my office. 23 Q. Okay. You still have them or have you thrown 24 them away? 25 A. I believe I should be able to locate them. I</p>

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<p>1 don't know exactly where they are now.</p> <p>2 Q. Okay. Did you have discussions with AMN's</p> <p>3 lawyers in California regarding the preparation of this</p> <p>4 chart?</p> <p>5 A. I don't recall doing that.</p> <p>6 Q. Did you have discussions with your current</p> <p>7 counsel, Mr. Colao or other people at his firm,</p> <p>8 regarding the preparation of this chart?</p> <p>9 A. I likely would have, yes.</p> <p>10 Q. Okay. And then there was a final version of this</p> <p>11 chart prepared which is attached here as Exhibit F,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And -- and you don't know who prepared</p> <p>15 that chart, but that's the chart that you're prepared to</p> <p>16 testify about, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And you don't have the backup information</p> <p>19 that goes to this chart here with you today, correct?</p> <p>20 A. I do not.</p> <p>21 Q. But it's available somewhere on a computer; is</p> <p>22 that right?</p> <p>23 A. I should be able to get a copy of this, yes.</p> <p>24 Q. Okay. In the meantime, during the break you</p> <p>25 accessed a computer to look at information about these</p>	<p>1 longer privileged if they serve as the basis for his</p> <p>2 testimony.</p> <p>3 MR. COLAO: Not for a non-retained expert.</p> <p>4 MR. TILLOTSON: Yeah, I don't think you can</p> <p>5 immunize privileged communications simply by hiring your</p> <p>6 own employee. That's the problem. But I'll lay a</p> <p>7 foundation.</p> <p>8 MR. COLAO: Yeah, I'm not going to let you</p> <p>9 go into any substance of communications with the AMN</p> <p>10 attorneys or with myself for that matter.</p> <p>11 MR. TILLOTSON: Okay. So I'm going to lay a</p> <p>12 foundation and if you'll just object, Brian, I'll give</p> <p>13 you an opportunity if you think I've gone too far.</p> <p>14 MR. COLAO: Yeah, I'm going to try to</p> <p>15 accommodate you so we don't have an issue here, but I</p> <p>16 want to let you know my position that I do think it's</p> <p>17 privileged and we're not going to get into that, but I'm</p> <p>18 trying not to just say he can't answer. I'm trying to</p> <p>19 give you something so that you can get the answers that</p> <p>20 you need versus -- versus just a blanket objection that</p> <p>21 you don't get anything.</p> <p>22 MR. TILLOTSON: Okay. Well --</p> <p>23 MR. COLAO: And I guess we can take it like</p> <p>24 you were asking. We can take it question by question.</p> <p>25 MR. TILLOTSON: Yeah, I'm -- I'm not going</p>
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<p>1 calculations, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And what information did you access about these</p> <p>4 calculations during the break?</p> <p>5 A. Well, a combination what I was able to find</p> <p>6 basically looks like this, but I did call, as I</p> <p>7 mentioned, to speak to Barakat about this and really</p> <p>8 work through the logic because the average was no longer</p> <p>9 making sense to me. As I looked at this I was not</p> <p>10 correctly recalling it, and as we talked through this</p> <p>11 and looking at this information, we came to that</p> <p>12 conclusion in recollection that this came from specific</p> <p>13 revenue as it tied to Mr. Gresham and to Ms. Wilmethe.</p> <p>14 Q. And who told you that? Ms. Barakat?</p> <p>15 A. Honest --</p> <p>16 MR. COLAO: Don't -- don't go through</p> <p>17 anything that you discussed with AMN lawyers that's</p> <p>18 privileged. I -- I mean, Jeff, I'm trying to let you</p> <p>19 ask questions, but a lot of this is priv -- you know,</p> <p>20 involves conversations with him and lawyers.</p> <p>21 MR. TILLOTSON: Not if he's going to be an</p> <p>22 expert. I don't think there is a privilege if he's a --</p> <p>23 I mean, I'll lay a foundation and you can make an</p> <p>24 objection, but just so you know my basis, if he's an</p> <p>25 expert witness his communications with lawyers are no</p>	<p>1 to argue. It hasn't -- well, I'm sorry. Let me just</p> <p>2 ask the question.</p> <p>3 Q. (BY MR. TILLOTSON) Did -- and give your lawyer</p> <p>4 the opportunity to object during these next series of</p> <p>5 questions. Did Ms. Barakat give you information</p> <p>6 regarding this particular chart during your phone call</p> <p>7 during the break?</p> <p>8 MR. COLAO: That's a yes or no. If that's a</p> <p>9 yes or no you can answer that.</p> <p>10 A. Yes.</p> <p>11 Q. (BY MR. TILLOTSON) And did you rely on what she</p> <p>12 told you to come back in here and testify and explain to</p> <p>13 me about this chart?</p> <p>14 A. In part, yes.</p> <p>15 Q. Okay. What is it she told you?</p> <p>16 MR. COLAO: Well, yeah, that's where we're</p> <p>17 going to object to the attorney/client privilege on the</p> <p>18 substance of that.</p> <p>19 MR. TILLOTSON: Okay. Are you going to</p> <p>20 instruct him not to answer?</p> <p>21 MR. COLAO: Yes, I am going to instruct him</p> <p>22 that.</p> <p>23 Q. (BY MR. TILLOTSON) You're going to follow that</p> <p>24 instruction, I assume --</p> <p>25 A. Yes.</p>

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<p>1 Q. -- and not answer that question? Okay. Did</p> <p>2 Mr. Colao give you information about this chart during</p> <p>3 the break? You can answer that yes or no.</p> <p>4 A. Yes.</p> <p>5 Q. And did you rely on that information in coming in</p> <p>6 here to testify about how to interpret this chart?</p> <p>7 A. In part, yes.</p> <p>8 Q. What did Mr. Colao tell you?</p> <p>9 MR. COLAO: Right, and that's where we'll</p> <p>10 object to attorney/client privilege. I instruct you not</p> <p>11 to answer the question.</p> <p>12 Q. (BY MR. TILLOTSON) And I'll assume you'll follow</p> <p>13 that instruction?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And did you actually have any original</p> <p>16 input into this chart at all? I mean -- by that, I</p> <p>17 mean, did you come up with any of the numbers or do any</p> <p>18 of the calculations, or was that all done by members of</p> <p>19 your finance team?</p> <p>20 A. I would've provided instruction to the finance</p> <p>21 team in terms of how to calculate this number.</p> <p>22 Q. And what role, if any, did Ms. Barakat have in</p> <p>23 the calculation of these numbers, if you know?</p> <p>24 A. She wouldn't have had any in the calculation and</p> <p>25 the creation of those numbers.</p>	<p>1 Mr. Gresham instead, right?</p> <p>2 A. Actually, in -- in some of those rare situations</p> <p>3 where someone comes back to Merritt Hawkins or comes</p> <p>4 from a competitor, would be more rare, it would've been</p> <p>5 an add at that point in time because it brings somebody</p> <p>6 back that's got experience. It would've been an</p> <p>7 additional number. It would have been a --</p> <p>8 Q. Okay.</p> <p>9 A. -- positive to that.</p> <p>10 Q. But presuming Mr. Gresham should have a faster</p> <p>11 run-up time in terms of generating revenue than a new</p> <p>12 hire?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. But if you look at his numbers there in</p> <p>15 Exhibit F going into the eighth month, which is April,</p> <p>16 May and June, he actually has extremely low production</p> <p>17 of the 7,000, 2,000, 5,000 figures. Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Okay. So it is possible even for a skilled</p> <p>20 fully-trained employee to have low production months</p> <p>21 during the course of their work there; is that correct?</p> <p>22 A. It is.</p> <p>23 Q. And I assume that's either seasonal or a</p> <p>24 particular client related matters; is that right?</p> <p>25 A. Or his own personal performance.</p>
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<p>1 Q. Okay. And can you explain why you turned to her</p> <p>2 to get information about this chart if she had no role</p> <p>3 in it?</p> <p>4 A. Just to help remembering the -- you know, how we</p> <p>5 had created these because I had discussed the number</p> <p>6 with her once we had generated these.</p> <p>7 Q. Okay. Now, I want to ask you about Mr. Gresham.</p> <p>8 He had obviously gone through the Merritt Hawkins</p> <p>9 training process from his prior employment, correct?</p> <p>10 A. Yes.</p> <p>11 Q. When he came back and was rehired at Merritt</p> <p>12 Hawkins, do you know if he went through the same 20-week</p> <p>13 process?</p> <p>14 A. No. He would've gone through an abbreviated</p> <p>15 version.</p> <p>16 Q. Okay. So there -- there presumably might have</p> <p>17 been some cost savings for rehiring Mr. Gresham?</p> <p>18 A. Some, yes.</p> <p>19 Q. Okay. And have you offset those costs against</p> <p>20 the savings versus what you say your costs are here to</p> <p>21 come with a true number?</p> <p>22 A. We have not offset those costs because those</p> <p>23 costs were still incurred at one point in time.</p> <p>24 Q. Okay. But presumably you were going to hire</p> <p>25 someone and instead of hiring that person, you hired</p>	<p>1 Q. Okay. He may not have been doing what he was</p> <p>2 supposed to be doing; is that right?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. So it's not always true that the longer</p> <p>5 they're there, the greater their production is going to</p> <p>6 be over a period of time; is that correct?</p> <p>7 A. Not always.</p> <p>8 Q. Okay. Now, do you know did -- did Wilmeth</p> <p>9 literally start the day after Gresham left?</p> <p>10 A. Yeah, I don't know those exact dates.</p> <p>11 Q. I see Gresham ends there in August and Wilmeth</p> <p>12 starts in September, and I'm assuming that Wilmeth</p> <p>13 wasn't hired to replace Gresham because you -- you</p> <p>14 couldn't have hired them literally the next day, right?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. So do you know if Wilmeth was actually</p> <p>17 working during August?</p> <p>18 A. I don't know her hire date off the top of my</p> <p>19 head. It's likely she could've been hired a month or so</p> <p>20 before and still been at zero because there's several</p> <p>21 months we're not generating profitability.</p> <p>22 Q. Okay. And then as I understand it, to -- to come</p> <p>23 up with lost profits, what you've done is you've taken</p> <p>24 the difference between what Wilmeth did and what Gresham</p> <p>25 did during those particular time periods, subtracted</p>

20 (Pages 74 to 77)

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<p>1 them, and come out with that number; is that right?</p> <p>2 A. Correct. We offset those two 12- month periods.</p> <p>3 Q. And what you're assuming is that Mr. Gresham</p> <p>4 would have during that same time period that Wilmeth was</p> <p>5 working, Mr. Gresham would've continued to have the same</p> <p>6 average billings that he had prior to his departure; is</p> <p>7 that correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. Now, let me ask a couple of other</p> <p>10 questions about that -- that -- that profit part of it.</p> <p>11 If Mr. Gresham just quit of his own accord, then there</p> <p>12 wouldn't be any damages, in your mind, accrued to</p> <p>13 Merritt Hawkins because people are entitled to quit</p> <p>14 Merritt Hawkins, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay. So the mere fact that Mr. Gresham quit and</p> <p>17 went to Consilium, so long as he wanted to quit, you</p> <p>18 would agree with me that you don't really have a claim</p> <p>19 simply because someone quit because they no longer want</p> <p>20 to work for you?</p> <p>21 A. No, I would not agree with that.</p> <p>22 Q. Okay. Well, how many of your employees during</p> <p>23 the last three years at Merritt Hawkins that have left</p> <p>24 have gone to competitors that you're aware of?</p> <p>25 A. Yeah, I don't know that number specifically.</p>	<p>1 department, is there an in-house legal department at</p> <p>2 Merritt Hawkins?</p> <p>3 A. No, it's centralized through AMN.</p> <p>4 Q. Okay. So if I did a tracking of all Merritt</p> <p>5 Hawkins employees that left within the five years that</p> <p>6 went to work for a competitor, leaving Merritt Hawkins,</p> <p>7 for each of those individuals there would have either</p> <p>8 been a lawsuit filed or some resolution with legal; is</p> <p>9 that correct?</p> <p>10 A. To the best of my knowledge, yes.</p> <p>11 Q. Okay. So you're not singling out Mr. Gresham or</p> <p>12 Consilium?</p> <p>13 A. Absolutely not.</p> <p>14 Q. Okay. Do you view Consilium as a competitor to</p> <p>15 Merritt Hawkins?</p> <p>16 A. Well, I have to. As I look on their web site,</p> <p>17 they say they do permanent placement. So that's what I</p> <p>18 do so, yes.</p> <p>19 Q. Have you competed against them for any particular</p> <p>20 client for permanent placement to your knowledge?</p> <p>21 A. To my knowledge, I'm not aware of that, no.</p> <p>22 Q. Have you lost any business to them on permanent</p> <p>23 placement to your knowledge?</p> <p>24 A. I wouldn't be aware of that.</p> <p>25 Q. Okay. Well, have you heard from any of your</p>
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<p>1 Q. All right. You're losing on average 25 -- to</p> <p>2 25 percent of your people a year, right?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And I presume some of those people are going to</p> <p>5 work for competitors?</p> <p>6 A. Very few.</p> <p>7 Q. Okay. How many lawsuits has Merritt Hawkins</p> <p>8 filed within the last five years based on people</p> <p>9 violating the noncompete?</p> <p>10 A. I would really have to pull that number, but it's</p> <p>11 any time someone has violated our employment agreement,</p> <p>12 we have pursued that infraction. That could be from as</p> <p>13 much as either just a letter from legal that engages a</p> <p>14 conversation that we worked to resolution, to filing a</p> <p>15 lawsuit, I would say at this given moment we are either</p> <p>16 in the process of finishing or active with three or four</p> <p>17 at this juncture.</p> <p>18 Q. Is there any competitor out there for whom if the</p> <p>19 employer goes to work for Merritt Hawkins doesn't bring</p> <p>20 suit as a matter of course?</p> <p>21 A. No. No, unless there's -- we're able to come to</p> <p>22 resolution before we file, but other words, the -- the</p> <p>23 direction of my legal department from me is if someone</p> <p>24 breaches their agreement, to pursue this legally.</p> <p>25 Q. And -- and when you say direction of your legal</p>	<p>1 people that Consilium got a particular matter or client</p> <p>2 that Merritt Hawkins was chasing?</p> <p>3 A. I haven't, but I don't hear that often anyway</p> <p>4 regarding my competitors.</p> <p>5 Q. Okay. So do your -- your expert designations</p> <p>6 that you said if you'll turn and look at -- we were on,</p> <p>7 I guess, page five, and I'm going to refer you to page</p> <p>8 six. Where you say damages plaintiff incurred from</p> <p>9 defendant Gresham's violation of his noncompete, you</p> <p>10 identify MHA's -- MHA's lost profits which is the thing</p> <p>11 we've just been looking at, right?</p> <p>12 A. Correct.</p> <p>13 Q. And these say profits made by Consilium as a</p> <p>14 result of Gresham's employment with Consilium; do you</p> <p>15 see that, in B?</p> <p>16 A. Page five or six? I'm --</p> <p>17 Q. Six.</p> <p>18 A. Six. Okay.</p> <p>19 Q. Okay. So we've looked at the -- the damages.</p> <p>20 This is the damages to -- to -- you've incurred because</p> <p>21 you believe Mr. Gresham violated his noncompete by going</p> <p>22 to work for Consilium, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And you do believe that, right?</p> <p>25 A. Oh, I do.</p>

21 (Pages 78 to 81)



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<p>1 Q. Right. And you've identified, first, lost</p> <p>2 profits, right?</p> <p>3 A. Correct.</p> <p>4 Q. Which is the figure we just looked at?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. The second one is profits made by</p> <p>7 Consilium; do you see that?</p> <p>8 A. I do.</p> <p>9 Q. You don't identify a figure because you don't</p> <p>10 know if Consilium made any money off Mr. Gresham,</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. And -- but one thing we're pretty certain of is</p> <p>14 you're not aware of any client of MHA that Consilium got</p> <p>15 because of Mr. Gresham, correct?</p> <p>16 A. I'm not. The only thing I'm aware of is when</p> <p>17 Consilium hired him they have an employee that comes to</p> <p>18 them fully trained and -- and prepared to engage in</p> <p>19 their business and I spent a lot of money getting that</p> <p>20 person trained up.</p> <p>21 Q. Okay. Did Mr. Gresham to your knowledge get</p> <p>22 training at Arthur Marshall?</p> <p>23 A. I'm not aware of that.</p> <p>24 Q. Okay. Was it wrong for you to hire him from</p> <p>25 Arthur Marshall and get the benefit of whatever training</p>	<p>1 someone specifically how to come from outside of our</p> <p>2 industry with no knowledge of the business itself, the</p> <p>3 industry, the space and to how to go about either, one,</p> <p>4 securing new searches or to be a recruiter and to be</p> <p>5 able to recruit given the physician for a hospital and</p> <p>6 those tactics are very specific and I believe unique to</p> <p>7 Merritt Hawkins. And you know, honestly, it's justified</p> <p>8 especially in cases like this and we've seen it before</p> <p>9 where the value to me is very clear when someone goes to</p> <p>10 great lengths to steal it. We've seen this in a prior</p> <p>11 case as well very recently where that is the first thing</p> <p>12 people want to steal. And if it's not so valuable, why</p> <p>13 bother?</p> <p>14 Q. How do you steal the training?</p> <p>15 A. They steal the training by downloading the</p> <p>16 information either by printing it or dropping it into an</p> <p>17 external drive and portably taking that with them.</p> <p>18 Q. But what information are we talking about? I</p> <p>19 mean, is this a manual? Is it a how-to? Is it a guide?</p> <p>20 What are we talking about?</p> <p>21 A. It is -- it is a combination of several things.</p> <p>22 It's a manual the how-to process step 1 through 44 of</p> <p>23 recruiting.</p> <p>24 Q. Okay.</p> <p>25 A. In great detail it also is an appendix of various</p>
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<p>1 or business he got at Arthur Marshall?</p> <p>2 A. No.</p> <p>3 Q. Did you pay money to Arthur Marshall to</p> <p>4 compensate them for hiring away their employee that they</p> <p>5 had trained personally?</p> <p>6 A. Well, they -- they got him after he'd been with</p> <p>7 me for an extended period of time. There was no</p> <p>8 training for them to do.</p> <p>9 Q. Okay.</p> <p>10 A. So no.</p> <p>11 Q. Someone works for Merritt Hawkins gets training.</p> <p>12 We're going to talk about that. Other than that there</p> <p>13 is no particular client or account or placement you can</p> <p>14 identify that Consilium obtained money from because of</p> <p>15 Mr. Gresham's employment, correct?</p> <p>16 A. Specifically, no. I cannot.</p> <p>17 Q. Okay. All right. Okay. I now want to talk</p> <p>18 about the training part of it. Explain to me, do you</p> <p>19 considering the training that's given to MHA employees</p> <p>20 such as Mr. Gresham proprietary?</p> <p>21 A. I do.</p> <p>22 Q. Okay. And tell me what's so proprietary or</p> <p>23 secret about the training?</p> <p>24 A. That training has been developed over many years</p> <p>25 with countless hours and dollars invested in educating</p>	<p>1 sources of information whether it be about specialties,</p> <p>2 about hospitals, about these other given items. It</p> <p>3 gives very specific training syllabus of if you're in a</p> <p>4 situation with a physician how to be able to address</p> <p>5 that situation.</p> <p>6 Q. Okay.</p> <p>7 A. How to be able to specifically overcome certain</p> <p>8 objectives, how to guide a candidates through the</p> <p>9 emotional process of making -- a decision to make a</p> <p>10 move.</p> <p>11 Q. Okay. And is that the essence of the training,</p> <p>12 the documents you described for me?</p> <p>13 A. It's a large part of it.</p> <p>14 Q. Okay. And you've obviously seen a list of the</p> <p>15 documents that Merritt Hawkins claims Mr. Gresham</p> <p>16 copied, correct?</p> <p>17 A. Well, I've seen the list that our expert --</p> <p>18 Q. Okay.</p> <p>19 A. -- generated, yes.</p> <p>20 Q. Okay. And correct me if I'm wrong, but I didn't</p> <p>21 see any of the documents you just described to me on</p> <p>22 that list, did you?</p> <p>23 A. You know what, let's take a look through it. The</p> <p>24 handoff call script is a part of that training process,</p> <p>25 so that would incur that piece.</p>

22 (Pages 82 to 85)

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<p>1 Q. Would you -- would you -- is it okay if I -- did</p> <p>2 you bring --</p> <p>3 MR. COLAO: That's his personal copy. If</p> <p>4 you want a --</p> <p>5 A. I can give you the list. In looking through this</p> <p>6 specifically, I would be careful.</p> <p>7 MR. TILLOTSON: Is it attached in here?</p> <p>8 MR. VOLNEY: Yeah, it's attached to that.</p> <p>9 A. See, in much of the training --</p> <p>10 Q. (BY MR. TILLOTSON) Hang on. Before you --</p> <p>11 A. Okay.</p> <p>12 MR. COLAO: Let them -- let him direct what</p> <p>13 he wants to do next.</p> <p>14 Q. (BY MR. TILLOTSON) What I want you to identify</p> <p>15 is any documents that your expert claims were copied by</p> <p>16 Mr. Gresham that you can identify are part of the</p> <p>17 training materials --</p> <p>18 A. Okay.</p> <p>19 Q. -- other than you've identified for us, item 22,</p> <p>20 which is a handoff call script doc; is that right?</p> <p>21 A. Second. I'm getting that in multiple spots then.</p> <p>22 Q. Okay.</p> <p>23 A. That's right. On my list that's number 50. Does</p> <p>24 that vary from what you have, Exhibit 5?</p> <p>25 Q. Oh, I'm looking at two. I apologize.</p>	<p>1 familiar with that list?</p> <p>2 A. I've seen this, but it's been a while.</p> <p>3 Q. Okay. So I think the other ones -- and I'm not</p> <p>4 trying to be difficult, I think the other ones are files</p> <p>5 deleted.</p> <p>6 A. Okay.</p> <p>7 Q. So I presume that -- that -- you -- you -- that</p> <p>8 deleted is different from copied, obviously, right?</p> <p>9 A. Yes.</p> <p>10 Q. So I want to focus on the stuff that he copied</p> <p>11 then that you can identify in that list of copy that</p> <p>12 comprised the training materials.</p> <p>13 A. Okay.</p> <p>14 Q. If you'll look just at -- I'll show you where I</p> <p>15 got confused item number 22 was the call script.</p> <p>16 A. Absolutely.</p> <p>17 Q. Okay.</p> <p>18 A. It's --</p> <p>19 Q. So if you'll just tell us the numbers in the list</p> <p>20 of Exhibit 2 to your expert designations what you</p> <p>21 believe are the training materials allegedly copied by</p> <p>22 Mr. Gresham.</p> <p>23 A. Okay. As part of that training process there</p> <p>24 will be certain documents provided there that are</p> <p>25 proprietary to Merritt Hawkins that are part of that</p>
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<p>1 A. That's all right. I'm going to go back --</p> <p>2 MR. COLAO: Yeah, I want you guys to be</p> <p>3 looking at the same thing, though, you know. I mean,</p> <p>4 Jeff, if you don't -- if the issue is you don't have a</p> <p>5 copy or something, I'll try to help you out. I'll have</p> <p>6 somebody make a copy, but I want everybody looking at</p> <p>7 the same thing. I don't want it to be --</p> <p>8 Q. (BY MR. TILLOTSON) Okay. So let's -- let's --</p> <p>9 let me back and make sure we're on the same page.</p> <p>10 You're -- an expert was retained by Merritt Hawkins in</p> <p>11 connection with the digital issues in this case,</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And that expert has prepared list of documents</p> <p>15 that were deleted and/or copied by Mr. Gresham</p> <p>16 allegedly, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Have you been provided with that expert's</p> <p>19 report?</p> <p>20 A. Yes.</p> <p>21 Q. Have you reviewed it?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. According to the expert report I have,</p> <p>24 which has been previously marked Exhibit 2 as identified</p> <p>25 as documents copied, I want to focus on those. Are you</p>	<p>1 training will be able to educate them on how to complete</p> <p>2 this, and the value of it, whether it's with a client</p> <p>3 interaction or a candidate. The first ones here begin</p> <p>4 with a CV which I think the first CV, a curriculum vitae</p> <p>5 -- let me back up here -- excuse me, cover letter. So</p> <p>6 one of the first client encounters will be able to</p> <p>7 educate a new recruiter on how to generate a cover</p> <p>8 letter, which is a cover letter to the curriculum vitae,</p> <p>9 and to be able to learn how to write that, what you can</p> <p>10 give to a client legally, the information and data</p> <p>11 that's pertinent to a client. The first one on this</p> <p>12 list is number two and that's that CL. If you'd like,</p> <p>13 there are several examples in here of copies of versions</p> <p>14 of those cover letters being -- being copied. Do you</p> <p>15 want me to mention each one of those?</p> <p>16 MR. COLAO: Do you want him to mark the</p> <p>17 exhibit? I mean, or just -- it's up to you.</p> <p>18 MR. TILLOTSON: No.</p> <p>19 THE WITNESS: Because it's a lot of</p> <p>20 redundancy.</p> <p>21 MR. TILLOTSON: Well, that's fine.</p> <p>22 Q. (BY MR. TILLOTSON) Here's what I need. You've</p> <p>23 testified just by background -- and I'll ask you to mark</p> <p>24 the exhibits. We can do this. You testified that the</p> <p>25 training -- their comprised proprietary materials</p>

23 (Pages 86 to 89)

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<p>1 prepared by Merritt Hawkins given to your individuals.  2 You've also testified that Mr. Gresham improperly  3 benefitted by taking those with him wherever he went.  4 A. Uh-huh.  5 Q. We have a list here prepared by your expert of  6 materials that they believed he copied.  7 A. Okay.  8 Q. Okay. And I just want to identify which of those  9 materials on that list you would consider to be the  10 training materials that are proprietary by MHA and you  11 can -- you can highlight just the number of any of those  12 that you do.  13 A. Okay.  14 Q. And I'll ask you a few questions about it, okay?  15 A. Okay.  16 Q. Fair enough?  17 MR. COLAO: Okay. Well, let's -- let's just  18 -- you can stay there. I'm going to grab a -- I mean, I  19 guess you only have one copy of this. I want to follow  20 along. I mean, I've got --  21 MR. TILLOTSON: It's previously marked so I  22 apologize.  23 MR. COLAO: I'll grab a copy. Don't,  24 obviously, say anything to anybody, but if you want to  25 quietly review that for a second. Let's go off the</p>	<p>1 A. I'm assuming, yes.  2 Q. Okay. And the reason why you think it's the  3 training materials is because you train your people on  4 how to send out the appropriate cover letters; is that  5 correct?  6 A. That's correct.  7 Q. Okay. So although you identified item nine as  8 part of the training material, what you really mean is  9 this is a cover letter which is an example of something  10 you train your people on; is that right?  11 A. It's a combination of a template that is used  12 during training, and of course --  13 Q. Okay.  14 A. -- I learned more about what to put in the  15 template.  16 Q. Who are the cover letters sent to?  17 A. They're sent to our clients.  18 Q. So basically hospitals?  19 A. Hospitals, clinics, whomever has us retained.  20 Q. Okay. And what requirements do you have of those  21 hospitals to keep those cover letters confidential,  22 i.e., not share them with anyone else?  23 A. We require our clients to -- to keep that  24 information to just within a need-to-know basis and that  25 they -- should they share that information outside of</p>
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<p>1 record. I'm just going to grab my copy. If we're going  2 to do this, I want to follow along.  3 THE VIDEOGRAPHER: Off the record. It's  4 11:50 a.m.  5 (Break taken from 11:50 a.m. to 11:58 a.m.)  6 THE VIDEOGRAPHER: We're back on the record.  7 The time is 11:58 a.m.  8 Q. (BY MR. TILLOTSON) Okay. Mr. Smith, during the  9 break I asked you to go through Exhibit 2 to your expert  10 designations and highlight anything that you thought was  11 part of the training materials that was identified by  12 your expert as copied by Mr. Gresham. Have you done  13 that?  14 A. I have.  15 Q. Okay. And those are designated by the yellow  16 highlighting; is that correct?  17 A. That is correct.  18 Q. Okay. So I'm going to take one of the first ones  19 you told me, which was a CL. It's called number nine CL  20 Patel doc, okay and I assume that's a cover letter to  21 someone named Patel?  22 A. About someone named Patel, yes.  23 Q. Okay. And -- and I take it that this might be a  24 actual real-life document, like a real-life cover letter  25 that was sent out?</p>	<p>1 the group that's necessary to be involved and this  2 recruitment effort we didn't have issues with privacy  3 for letting others know that the candidate may be  4 looking for a role, but also in fact should they share  5 that data with another organization that then engages  6 that candidate and hires them that that party owes us  7 the placement fee.  8 Q. Okay. Who came up with the Merritt Hawkins  9 concept for the cover letter that you train your  10 employees on?  11 A. It's many iterations over the years. Principally  12 the most current version would have been the  13 responsibility of Mike Faye, who is the head of our  14 training with input from both internal and external  15 counsel.  16 Q. And -- and how many of these cover letters do you  17 think are sent out on an annual basis?  18 A. Thousands.  19 Q. Okay. Your web site identifies that more than  20 eight million practice opportunity letters are sent to  21 physicians each year?  22 A. That's different --  23 Q. Is that different?  24 A. Very different, yes.  25 Q. Okay. Is the practice opportunity physician's</p>

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<p>1 letter, does that consider part of the training</p> <p>2 materials?</p> <p>3 A. How to write one is.</p> <p>4 Q. Okay. And those are sent out to I presume to</p> <p>5 doctors and physicians everywhere?</p> <p>6 A. Yes, physicians.</p> <p>7 Q. All over?</p> <p>8 A. And other practitioners.</p> <p>9 Q. Okay. And they can show it to whoever they want,</p> <p>10 I take it?</p> <p>11 A. They can.</p> <p>12 Q. Okay. So it would be pretty hard to keep your --</p> <p>13 your technique for practice opportunity letters secret</p> <p>14 or confidential when millions are being sent out to</p> <p>15 doctors and they can do whatever they want with them,</p> <p>16 correct?</p> <p>17 A. There is a real art between getting the raw data</p> <p>18 of what exists in a community and creating that letter,</p> <p>19 and each one's unique.</p> <p>20 Q. Do you think Joe -- you know Joe Hawkins, don't</p> <p>21 you?</p> <p>22 A. I do.</p> <p>23 Q. Okay. You worked with him?</p> <p>24 A. I did.</p> <p>25 Q. Okay. Did he know how to write a cover letter or</p>	<p>1 A. That we do that, no.</p> <p>2 Q. Right. Because your web site identifies your use</p> <p>3 of detailed itineraries as one of the techniques Merritt</p> <p>4 Hawkins uses that separates it from others, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And so the mere notion that you do a very</p> <p>7 detailed itinerary is not a proprietary or confidential</p> <p>8 information, correct?</p> <p>9 A. How to do develop it is.</p> <p>10 Q. Okay.</p> <p>11 A. But the fact that we do that is not.</p> <p>12 Q. And is the itinerary given to the doctor?</p> <p>13 A. It is.</p> <p>14 Q. And can the doctor do whatever he wants with it?</p> <p>15 A. He can.</p> <p>16 Q. Can the doctor show it to someone at Consilium if</p> <p>17 he wants to?</p> <p>18 A. If they so chose.</p> <p>19 Q. Okay. So it's pretty hard to keep it</p> <p>20 confidential when you're giving them to people over whom</p> <p>21 you have no control, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Now, one of the other ones you identified</p> <p>24 was a personal interview. Can you describe for me what</p> <p>25 that is?</p>
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<p>1 have some of these ideas in his head at the time when he</p> <p>2 left and sold the business?</p> <p>3 A. He did. They've changed a bit since then, but</p> <p>4 yes, he did.</p> <p>5 Q. Okay. And so anything that's listed as a CL that</p> <p>6 you've identified, that's a similar example of a cover</p> <p>7 letter; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. You've also identified a bunch of</p> <p>10 documents called itineraries. Can you tell me what</p> <p>11 those are?</p> <p>12 A. Those are the itineraries developed for each</p> <p>13 physicians that goes on sites experience with client.</p> <p>14 Q. Okay.</p> <p>15 A. They're intended to be very customized, focus on</p> <p>16 that physician's particular needs in terms of who it is</p> <p>17 they want to meet specific to the job itself, but also</p> <p>18 as it pertains to the personal needs of that given</p> <p>19 candidate in a community to make sure we've provided</p> <p>20 enough detail on that visit for them to be able to make</p> <p>21 a decision to move themselves and their family there.</p> <p>22 Q. Okay. The -- the notion that you guys do</p> <p>23 detailed personalized interviews -- I'm sorry. The</p> <p>24 notion that Merritt Hawkins uses detailed personalized</p> <p>25 itineraries is not a secret, correct?</p>	<p>1 A. What I believe that is -- I'm going off the</p> <p>2 descriptions of those particular files -- would've been</p> <p>3 a packet that we provide a candidate that details the</p> <p>4 itinerary experience of working with Merritt Hawkins</p> <p>5 from the onset of our encounter with them to -- and that</p> <p>6 can commonly include their itinerary as well as</p> <p>7 expectations of them during and after the process.</p> <p>8 MR. TILLOTSON: Okay. I'm going to have you</p> <p>9 mark this. Thank you.</p> <p>10 (Exhibit Number 115 marked.)</p> <p>11 Q. (BY MR. TILLOTSON) I'm going to show you what we</p> <p>12 can compare as we go through here what I've marked as</p> <p>13 Exhibit 115. I'll represent to you this is a printout</p> <p>14 from your Merritt Hawkins web site. Do you recognize</p> <p>15 this as some part of your web site?</p> <p>16 A. I do.</p> <p>17 Q. Okay. This is entitled the recruitment iceberg.</p> <p>18 Do you see that right there in the middle right under</p> <p>19 that lovely lady?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And I take it the recruitment iceberg</p> <p>22 refers to there are things below the surface that you</p> <p>23 guys do?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And you've got over here the overlooked</p>

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<p>1 elements of the recruitment process. If you turn to</p> <p>2 page two you describe elements of your proven plan. Do</p> <p>3 you see that, the bullet points?</p> <p>4 A. I do.</p> <p>5 Q. Okay. And you can see where if you'll go down,</p> <p>6 number four says multiple hours of preinterview phone</p> <p>7 time with candidates, spouse. And then further down</p> <p>8 preinterview personal recruiter consultant with</p> <p>9 candidate. Are those aspects what we're talking about</p> <p>10 when we -- when you identify here the interview?</p> <p>11 A. Those are the titles, yes.</p> <p>12 Q. Okay. So the proprietary part of it would be the</p> <p>13 way you do it?</p> <p>14 A. It would.</p> <p>15 Q. Okay. And is a document created of the</p> <p>16 interview?</p> <p>17 A. I'm not sure I understand what you mean.</p> <p>18 Q. Is there any written document that's created from</p> <p>19 the interview of the doctors?</p> <p>20 A. After the fact or before?</p> <p>21 Q. Yes. Well, happening?</p> <p>22 A. Okay. No.</p> <p>23 Q. Okay. So you just -- so I understand, the</p> <p>24 training part is you train your people to conduct these</p> <p>25 pre-interviews in a certain way?</p>	<p>1 as direct mail client authorization. Can you tell me</p> <p>2 what those are?</p> <p>3 A. Yes. Those -- that is the authorization we use</p> <p>4 when we do a sourcing campaign for a client, that they</p> <p>5 are aware of the costs and some specifics of what it is</p> <p>6 that we intend to do in the process and that they</p> <p>7 authorize that cost.</p> <p>8 Q. Okay. So is it a form?</p> <p>9 A. Basically, yes.</p> <p>10 Q. Okay. Not to be cute about it, but is there</p> <p>11 anything secret about asking a client to authorize</p> <p>12 expenses that you need --</p> <p>13 A. No. It is -- I believe that document is unique</p> <p>14 because we are one of the few people that actually do</p> <p>15 that type of sourcing. It's more specific to the</p> <p>16 strategy of what we intend to do providing of the letter</p> <p>17 campaign in terms of just not the contents, but in terms</p> <p>18 of who it goes to, the volumes of which it goes to,</p> <p>19 strategically where it's being mailed and then also the</p> <p>20 bit of our online strategy about how we post the</p> <p>21 opportunity, where we post it and what that means to</p> <p>22 them and what the cost will be.</p> <p>23 Q. Okay. Well, I saw one other one. There was some</p> <p>24 listed as expense or EXP reimbursement. Do those sound</p> <p>25 familiar?</p>
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<p>1 A. We do. It's an 11-step process.</p> <p>2 Q. Okay. And so the document that you say was</p> <p>3 copied, what is that?</p> <p>4 A. That -- that portion is the document provided to</p> <p>5 the candidate.</p> <p>6 Q. Okay.</p> <p>7 A. It guides them through their interview process,</p> <p>8 expectations, et cetera.</p> <p>9 Q. Okay. Again, is the candidate free to do</p> <p>10 whatever he or she --</p> <p>11 (Witness coughs.)</p> <p>12 A. Excuse me.</p> <p>13 Q. (BY MR. TILLOTSON) No problem.</p> <p>14 A. Yes, they are.</p> <p>15 Q. And is there a manual that tells you or teaches</p> <p>16 your -- your people how to do these interviews?</p> <p>17 A. There is.</p> <p>18 Q. Okay. Was the manual on here in the list that</p> <p>19 you --</p> <p>20 A. I did not see that.</p> <p>21 Q. Okay. So to the best of your knowledge, whatever</p> <p>22 Mr. Gresham did it does not appear that he copied the</p> <p>23 manual?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. Then you have a bunch of ones identified</p>	<p>1 A. They do.</p> <p>2 Q. What are those?</p> <p>3 A. Those are provided in that personal interview</p> <p>4 packet. It's a template we provided to the candidate to</p> <p>5 let them know what is the process to be reimbursed for a</p> <p>6 cost that they encounter and also, you know, what is in</p> <p>7 essence appropriate to be reimbursed for and not</p> <p>8 appropriate.</p> <p>9 Q. Okay. Who is that given to: Your employees or</p> <p>10 to the client?</p> <p>11 A. That is given to the candidate and then that can</p> <p>12 be returned directly to the client or to us to process</p> <p>13 and get that to the client.</p> <p>14 Q. Okay. And do you think if -- if Mr. Gresham had</p> <p>15 that at Consilium it would provide him some competitive</p> <p>16 advantage that he wouldn't otherwise have?</p> <p>17 A. Just a head start creating --</p> <p>18 Q. On what?</p> <p>19 A. Just to create that document.</p> <p>20 Q. To get authorization for expenses reimbursements?</p> <p>21 A. Yes.</p> <p>22 Q. You believe that honestly provides Consilium with</p> <p>23 some competitive advantage knowing that?</p> <p>24 A. It's enough to steal.</p> <p>25 Q. Well, I'm not asking you whether or not it's</p>

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<p>1 enough to steal. I'm asking you: Do you honestly</p> <p>2 believe that provides Consilium with some competitive</p> <p>3 business advantage that they have your form for how</p> <p>4 expenses might be reimbursed from a client?</p> <p>5 A. I don't see why not, yes.</p> <p>6 Q. Is there some proprietary way about how you have</p> <p>7 your clients reimburse expenses that no one else in the</p> <p>8 industry knows?</p> <p>9 A. You know what, I only know our way. I've been</p> <p>10 here almost 26 years. It's my only experience.</p> <p>11 Q. But your web site says that your 44-step</p> <p>12 improvement plan set the industry standard for</p> <p>13 thoroughness and professionalism, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Industry standard means that's what everyone is</p> <p>16 doing and trying to follow, correct?</p> <p>17 A. Attempting to.</p> <p>18 Q. Okay. So you brag that everyone is out trying to</p> <p>19 do what you're doing, correct?</p> <p>20 A. I think they're trying to get our end result,</p> <p>21 yes.</p> <p>22 Q. It couldn't be the industry standard if no one</p> <p>23 knew what you were doing, right?</p> <p>24 A. The result, no. The process, yes.</p> <p>25 Q. All right. Okay. Now, I want to ask you --</p>	<p>1 A. Either through a combination of conversation, but</p> <p>2 also through various litigations that we've had with</p> <p>3 these competitors to receive copies of their documents</p> <p>4 or if in fact someone has come to me from a competitor,</p> <p>5 asked for a copy of that to be able to look at that</p> <p>6 document to determine if that's -- to make sure that</p> <p>7 we're not in violation of any of that.</p> <p>8 Q. Do -- are there any of your competitors that</p> <p>9 don't employ noncompetes?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. How many would you say as a percentage of</p> <p>12 your competitors that don't employ noncompetes?</p> <p>13 A. At a guess -- there are, to be specific, probably</p> <p>14 10 to 20 percent that have a total at will arrangement</p> <p>15 where there's no employment agreement. To my knowledge</p> <p>16 the rest have employment agreements. The question is to</p> <p>17 whether they have a noncompetitive aspect to them.</p> <p>18 Q. Okay. Do you know?</p> <p>19 A. Do I know what any of --</p> <p>20 Q. How many of those have noncompetes?</p> <p>21 A. To one degree or another I would say the rest of</p> <p>22 that -- that group in terms of it'll vary in terms of</p> <p>23 the intensity and the specific expectations of the</p> <p>24 employee in terms of what they're allowed to do and not</p> <p>25 to do --</p>
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<p>1 since we're talking about confidential information, I</p> <p>2 want to ask you to turn to your expert designation page</p> <p>3 three, if you will. Page three. And if you want to</p> <p>4 carry over, I'm going to start with the paragraph that</p> <p>5 begins on page two based on his knowledge. I want to</p> <p>6 focus, if you will on the paragraphs with the letters A,</p> <p>7 B and C. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Which follows from number seven, it says the</p> <p>10 industry standards and practices with respect to</p> <p>11 noncompetition, non-solicitation and confidential</p> <p>12 information provisions of employment contracts, okay?</p> <p>13 A. Okay.</p> <p>14 Q. Are you familiar with the industry standards and</p> <p>15 practices with respect to noncompetition,</p> <p>16 non-solicitation and confidential information?</p> <p>17 A. I believe I am.</p> <p>18 Q. Okay. And what are those standards?</p> <p>19 A. They vary by organization and I'm answering your</p> <p>20 question in terms of -- with each of our competitors to</p> <p>21 know what their expectations are, I have a general idea</p> <p>22 of each of their employment agreements and in what way</p> <p>23 they restrict someone that has been their employee</p> <p>24 before transitioning into a competitor.</p> <p>25 Q. Okay. How did you gain that information?</p>	<p>1 Q. Okay.</p> <p>2 A. -- but there's definitely limitations to them.</p> <p>3 Q. Okay. Now, are you familiar with the two</p> <p>4 noncompetes that are at issue in this case?</p> <p>5 A. The ones that are mine?</p> <p>6 Q. Yes.</p> <p>7 A. Yes.</p> <p>8 Q. Those would be the ones at issue in this case.</p> <p>9 Okay. The -- we previously marked a complaint as</p> <p>10 Exhibit 107.</p> <p>11 MR. TILLOTSON: Brian, I have a copy if you</p> <p>12 want it.</p> <p>13 Q. (BY MR. TILLOTSON) Exhibit 107 is the complain</p> <p>14 in this case. Did you review the complaint before it</p> <p>15 was filed?</p> <p>16 A. I did.</p> <p>17 Q. Okay. I'll ask you to turn to Exhibit A to the</p> <p>18 complaint which has been identified as the employment</p> <p>19 agreement of Billy Bowden. Do you see that?</p> <p>20 A. One second here.</p> <p>21 Q. Keep going. It's in the back.</p> <p>22 A. Okay. Thank you.</p> <p>23 MR. VOLNEY: There's a number on top.</p> <p>24 Q. (BY MR. TILLOTSON) That's Mr. Gresham's. One</p> <p>25 more and you'll be there.</p>

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<p>1 A. Oh, one more back?</p> <p>2 Q. No, one more forward.</p> <p>3 A. Forward. Okay.</p> <p>4 Q. You got it.</p> <p>5 A. Is that it?</p> <p>6 Q. Okay. Can you confirm this is the employment</p> <p>7 agreement between Mr. Bowden and Merritt Hawkins?</p> <p>8 A. Yes, it is.</p> <p>9 Q. Okay. I'm going to focus on the provision at</p> <p>10 issue in the case which is the non-solicitation</p> <p>11 provision so. There are some page numbers up at the</p> <p>12 top, but if you'll generally turn to what's identified</p> <p>13 at the top as page -- page ID32. Over here you see some</p> <p>14 page numbers?</p> <p>15 A. Yep.</p> <p>16 Q. This is the noncompetition provision article</p> <p>17 seven; do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Okay. I want you to take a look at C1 and tell</p> <p>20 me whether or not you think that's a industry standard</p> <p>21 noncompete provision in the business in which Merritt</p> <p>22 Hawkins is in.</p> <p>23 A. I do.</p> <p>24 Q. Okay. If you will then turn the page. If you'll</p> <p>25 look at 4 -- D1 which is the same or similar businesses</p>	<p>1 A. I am.</p> <p>2 Q. First, can you confirm for us was Mr. Bowden</p> <p>3 terminated from MHA?</p> <p>4 A. You know, I'm honestly not sure.</p> <p>5 Q. Okay. But in your mind, does it make any</p> <p>6 difference whether you fire someone or whether they quit</p> <p>7 as to whether they'll be bound by this?</p> <p>8 A. I do not.</p> <p>9 Q. Okay. Do you have any understanding as to why</p> <p>10 there is a three-year requirement in this provision</p> <p>11 whereas the other ones only have a year?</p> <p>12 A. Yes, I do. It's when we bring people into our</p> <p>13 organization there's a certain level of trust provided</p> <p>14 them in different tiers, whether it be initially</p> <p>15 allowing them into -- with training information, client</p> <p>16 lists, financial data, et cetera, different levels. But</p> <p>17 to allow someone to come into the organization and then</p> <p>18 once they depart, whether it be at their own free will</p> <p>19 or at our request, to be able to damage the organization</p> <p>20 by recruiting away our team members is not something</p> <p>21 that's acceptable. We've invested millions in getting</p> <p>22 these folks trained and into their roles and productive,</p> <p>23 and we weren't going to allow them to do damage to the</p> <p>24 organization until they are outside of this window.</p> <p>25 Q. Why three years?</p>
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<p>1 MHA which is defined as the business of recruitment of</p> <p>2 medical specialist selling of services to clients and</p> <p>3 account management of new and current business; do you</p> <p>4 see that?</p> <p>5 A. I do.</p> <p>6 Q. To your understanding, does the recruitment of</p> <p>7 medical specialists include both, temporary and</p> <p>8 permanent placement?</p> <p>9 A. It does.</p> <p>10 Q. Okay. I then want you to focus then on the</p> <p>11 article eight which is noninterference there at the</p> <p>12 bottom and carries over to the top which provides that</p> <p>13 Mr. Bowden for a period of 36 months subsequent to his</p> <p>14 termination, whether such termination occurs at the</p> <p>15 assistance of MHA or the employee, the employee shall</p> <p>16 not solicit or recruit directly or by assisting others,</p> <p>17 any other employees of MHA, its parent companies,</p> <p>18 subsidiary companies, affiliated companies, successors</p> <p>19 or assigns, not should the employee contact or</p> <p>20 communicate with any other employees of MHA. And I'm</p> <p>21 going to skip all of that down. For the purposes of</p> <p>22 inducing other employees to terminate their employment</p> <p>23 with MHA. Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Are you familiar with this provision?</p>	<p>1 A. Seems like a fair period of time to me.</p> <p>2 Q. Well, you have -- you told me about 25 percent</p> <p>3 turnover during that three-year period approximately</p> <p>4 75 percent turnover, correct?</p> <p>5 A. Not necessarily. What ends up happening is that</p> <p>6 that turnover occurs at that earlier stage of people's</p> <p>7 career. So once they reach a certain tenure, that falls</p> <p>8 off significantly.</p> <p>9 Q. Okay. But why was three years picked as an</p> <p>10 appropriate period of time; do you know?</p> <p>11 A. Honestly, it seemed like a fair period of time</p> <p>12 for all of us at that point in time. We designed this.</p> <p>13 We had this in our agreement for many, many, years.</p> <p>14 Q. Right, but other than it was there --</p> <p>15 A. Okay.</p> <p>16 Q. -- is there a business -- legitimate business</p> <p>17 reason you can think of for three years versus one year</p> <p>18 for -- for requiring ex-employees not to solicit or talk</p> <p>19 to your employees about quitting their job?</p> <p>20 A. Again, it's -- during that window if someone</p> <p>21 decides to leave the organization and go do something on</p> <p>22 their own, I felt that was a fair period of time for</p> <p>23 them to have a arms-length relationship and not attempt</p> <p>24 to negatively impact our business. And all that is in</p> <p>25 return for what we gave them in the process in terms of</p>

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<p>1 training, experience and access.</p> <p>2 Q. Okay. But -- but this would restrict or restrict</p> <p>3 Mr. Bowden from offering his opinion of Mr. Gresham</p> <p>4 asked Mr. Bowden. I don't like it here. I'd like to</p> <p>5 quit. What do you think I should do. Under this</p> <p>6 particular provision Mr. Bowden could not say you should</p> <p>7 quit that job, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And, he, Mr. Bowden, couldn't even tell</p> <p>10 Mr. Gresham you should quit that job and go on a safari</p> <p>11 somewhere, correct?</p> <p>12 A. Correct.</p> <p>13 Q. For any reason, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And this restriction would apply to, let's say,</p> <p>16 an employee left and you told Mr. Bowden you're fired.</p> <p>17 We want you to leave here in 30 days. Mr. Bowden calls</p> <p>18 up a former employer of MHA and says, hey, they're</p> <p>19 firing me. What should I do. The former employee would</p> <p>20 be restricted under this provision and couldn't even</p> <p>21 tell him you should leave even though you're trying to</p> <p>22 fire Mr. Bowden, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And does it matter whether the employee -- let me</p> <p>25 give you another example. If the employee called</p>	<p>1 about its ex-employees communicating to its current</p> <p>2 employees? What's the business interest you're --</p> <p>3 A. The business interest, those are valuable assets.</p> <p>4 These are folks that we've spent considerable money</p> <p>5 training to get in a situation where we've allowed them</p> <p>6 to develop relationships with our clients, which we</p> <p>7 spent an incredible amount of money securing these folks</p> <p>8 and not to be able to be influenced by an outside party</p> <p>9 that has their own agenda.</p> <p>10 Q. Okay. Do you -- do you know how many employees</p> <p>11 if any, Merritt Hawkins has lost because they were</p> <p>12 improperly solicited by ex-employees at Merritt Hawkins?</p> <p>13 A. I don't have the number for that.</p> <p>14 Q. Okay. Now, I want to turn, if you will, to --</p> <p>15 well, before let's just talk about Mr. -- Mr. Bowden.</p> <p>16 Other than -- do you have any personal knowledge of any</p> <p>17 communications Mr. Bowden had with Mr. Gresham?</p> <p>18 A. I've seen copies of text messages.</p> <p>19 Q. Okay. Other than that, do you have any personal</p> <p>20 knowledge?</p> <p>21 A. No. I have no way of knowing that.</p> <p>22 Q. Okay. Do you have any factual basis to believe</p> <p>23 that Mr. Bowden was the reason Mr. Gresham quit other</p> <p>24 than the text messages that you read?</p> <p>25 A. Other than the text messages where he was</p>
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<p>1 Mr. Bowden and said, I'm being sexually harassed here,</p> <p>2 it's miserable over here at MHA, what should I do, it</p> <p>3 would have been a violation of this non-solicitation for</p> <p>4 Mr. Bowden to say you should get out of there if that's</p> <p>5 how you feel, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Is there any legitimate business reason in</p> <p>8 restricting your employees from hearing from others</p> <p>9 about whether or not they should take a different</p> <p>10 direction in their life?</p> <p>11 A. I don't see a positive reason for them to be able</p> <p>12 to do that. It's -- this has to do with their</p> <p>13 professional relationship, their vehicles throughout the</p> <p>14 organization, if someone feels, as you mentioned,</p> <p>15 harassed or something there, there's programs throughout</p> <p>16 our entire company to be able to handle malicious</p> <p>17 situations like that. And that can be done anonymously</p> <p>18 in any way where they feel protected and so situations</p> <p>19 like that, calling an ex-employee or a friend is of no</p> <p>20 value. If they want to get career advice, if they want</p> <p>21 to be able to say should I stay or should I go, then</p> <p>22 they're going to need to get that from another party not</p> <p>23 from a former ex-employee or disgruntled employee at</p> <p>24 Merritt Hawkins.</p> <p>25 Q. What is -- what is Merritt Hawkins so concerned</p>	<p>1 facilitating interviews, no.</p> <p>2 Q. Okay. Did you have an opportunity to speak to</p> <p>3 Mr. Gresham before he quit?</p> <p>4 A. I did not.</p> <p>5 Q. When's the last time you talked to Mr. Gresham</p> <p>6 when he was employed there?</p> <p>7 A. I do not know that.</p> <p>8 Q. Did you ever talk to him?</p> <p>9 A. Yeah, hallway conversations.</p> <p>10 Q. Okay. Do you know if Mr. Gresham was in fact</p> <p>11 getting poor reviews from his boss?</p> <p>12 A. I don't recall that.</p> <p>13 Q. Are you aware of any information that Merritt</p> <p>14 Hawkins had that Mr. Gresham was in fact not setting up</p> <p>15 interviews and not doing his job despite claiming he was</p> <p>16 prior to his termination?</p> <p>17 A. I don't not have that specific knowledge, no.</p> <p>18 Q. Okay. When you guys fire people or terminate</p> <p>19 them, do you ask them to leave like that day?</p> <p>20 A. If they're terminated, yes, quickly.</p> <p>21 Q. Okay. So they're -- they leave right away. They</p> <p>22 don't --</p> <p>23 A. If they're terminated. If they resign, it's</p> <p>24 typically a different story.</p> <p>25 Q. Okay. Okay. Do you pay severance if they're</p>

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<p>1 terminated?</p> <p>2 A. Just according to company policy.</p> <p>3 Q. Okay. Now, I want to turn to --</p> <p>4 MR. TILLOTSON: By the way, just before we</p> <p>5 go here, I'm not trying to starve you, but --</p> <p>6 THE WITNESS: It's going to be hard to do.</p> <p>7 MR. TILLOTSON: I'll try to starve Brian.</p> <p>8 I'd like to go till 1:00 because I may be able to finish</p> <p>9 and then we can stop. Is that all right with you?</p> <p>10 THE WITNESS: Okay.</p> <p>11 MR. COLAO: Oh, you think -- yeah, that's</p> <p>12 fine.</p> <p>13 MR. TILLOTSON: I'm not trying to kill you.</p> <p>14 THE WITNESS: That's all right.</p> <p>15 Q. (BY MR. TILLOTSON) Okay. I want to, in turn,</p> <p>16 turn to Mr. Gresham's employment agreement.</p> <p>17 A. Okay. Do you have an ID number on that just</p> <p>18 to...</p> <p>19 Q. Thirty-seven.</p> <p>20 A. Thirty-seven. Save time there.</p> <p>21 Q. Okay.</p> <p>22 A. Okay.</p> <p>23 Q. And if you will, first will you confirm that this</p> <p>24 is Mr. Gresham's employment agreement?</p> <p>25 A. This is.</p>	<p>1 noncompete which is paragraph 5A restricts Mr. Gresham</p> <p>2 for a period of 12 months after the termination of the</p> <p>3 employee's employment from doing some things which we'll</p> <p>4 talk about in a second within the restricted territory.</p> <p>5 The restricted territory is defined as Dallas, Texas and</p> <p>6 all counties adjacent to Dallas County which is:</p> <p>7 Collin, Denton, Ellis, Hunt, Johnson, Kaufman, Rockwall</p> <p>8 and Tarrant. What's the business interest in</p> <p>9 restricting an employee from working in those counties?</p> <p>10 A. The business interest is that, again, as I've</p> <p>11 mentioned, we make a significant investment in taking</p> <p>12 folks that have had no experience in our industry, bring</p> <p>13 them to the point that they're not only trained</p> <p>14 proficient and that's a big investment. If those folks</p> <p>15 choose to leave and go on a safari for the next year,</p> <p>16 then that's their prerogative. That's a business</p> <p>17 expense to me. But if they choose or enticed to then</p> <p>18 take all that investment I've made in them and walk to a</p> <p>19 competitor, that's an issue for me. That's not a</p> <p>20 business expense. That is a significant business</p> <p>21 investment I've made in these folks and I'm at a fair</p> <p>22 position to be able to protect that. The vast majority</p> <p>23 of my competitors are all in the greater Dallas market.</p> <p>24 There are certainly a few that fall outside of that, but</p> <p>25 in terms of numbers, the vast majority is in this</p>
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<p>1 Q. Okay. His noncompete provision begins on page</p> <p>2 five.</p> <p>3 A. Okay.</p> <p>4 Q. And I'm going to ask you first to look at the</p> <p>5 cover document which is -- which is A. If you'll read</p> <p>6 that to yourself. I'm going to ask you a couple of</p> <p>7 questions about it.</p> <p>8 (Witness complies.)</p> <p>9 Q. (BY MR. TILLOTSON) Okay. First, it -- it</p> <p>10 restricts him for a period of 12 months within the</p> <p>11 restricted territory.</p> <p>12 MR. COLAO: Jeff, I think that's on page</p> <p>13 four, right?</p> <p>14 MR. TILLOTSON: Yeah.</p> <p>15 MR. COLAO: Oh, I'm sorry. I thought you</p> <p>16 said five.</p> <p>17 MR. TILLOTSON: No, I'm sorry.</p> <p>18 MR. COLAO: I just want to make sure</p> <p>19 everybody's looking on at the right --</p> <p>20 A. Yeah, I've got the right number here.</p> <p>21 Q. (BY MR. TILLOTSON) The noncompete is paragraph</p> <p>22 five and it's on page four.</p> <p>23 MR. COLAO: Okay.</p> <p>24 A. Here we go.</p> <p>25 Q. (BY MR. TILLOTSON) Okay. So the covenant</p>	<p>1 market. And so specifically in this situation is that</p> <p>2 if someone chooses to go through our training, to make</p> <p>3 that investment of time and effort and allow us to</p> <p>4 invest in them and they wish to stay in the business,</p> <p>5 what this asks them for is to say that that's fine if</p> <p>6 you want to move to Tulsa or Atlanta or Houston or</p> <p>7 anywhere outside of this. If you want to drive -- it's</p> <p>8 going to be roughly 50-plus miles and work out of that</p> <p>9 office for that period of a first year then you can do</p> <p>10 so. That -- that is the limitation if you choose to</p> <p>11 take all of the training and resources we've given you</p> <p>12 and use them against me with a competitor.</p> <p>13 Q. And so is the purpose of this provision not so</p> <p>14 much to keep them from soliciting clients in Dallas</p> <p>15 County, but to keep them from working for your</p> <p>16 competitors, almost all of them who reside in the Dallas</p> <p>17 County area?</p> <p>18 A. Within that first year, yes.</p> <p>19 Q. Okay. Because Mr. Gresham could've moved to</p> <p>20 Kansas City and recruited people in Dallas, correct?</p> <p>21 A. Else he could've done so, if in fact, he was not</p> <p>22 infringing on his clients he worked with in the past</p> <p>23 12 months.</p> <p>24 Q. Okay. Fair point.</p> <p>25 A. Okay.</p>

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<p>1 Q. And I appreciate that. But -- but it's not so</p> <p>2 much you care that he might be calling Methodist</p> <p>3 Hospital in Dallas County, you just want him to have to</p> <p>4 move before he does that?</p> <p>5 A. Well, what I want to happen is for there to be a</p> <p>6 fair enough encumbrance from me making an investment</p> <p>7 with people and then a competitor coming along and</p> <p>8 saying I didn't make a penny investment, but I'm going</p> <p>9 to entice this person to leave and to just take away</p> <p>10 that investment from the company. That's -- that's not</p> <p>11 something acceptable for me.</p> <p>12 Q. Okay. So it -- it is -- the purpose of the</p> <p>13 provision is to -- is to prevent your competitors from</p> <p>14 poaching your employees?</p> <p>15 A. Yes, from them benefitting from all the training</p> <p>16 that we've done.</p> <p>17 Q. Okay. All right. Now, the thing that they're</p> <p>18 restricted from doing in the restricted territory is</p> <p>19 performing services of the same, similar or greater</p> <p>20 nature to those performed by the employee for the</p> <p>21 company for any person, entity or venture which competes</p> <p>22 with the business of the company which includes</p> <p>23 recruitment and providing temporary and permanent health</p> <p>24 care professional replacements. Do you see that?</p> <p>25 A. I do.</p>	<p>1 competitors, it's probably somewhere between 50 to 60.</p> <p>2 Q. Okay. So effectively by having someone agree to</p> <p>3 this noncompete, in your mind, you're locking them out</p> <p>4 of 70 percent to maybe 80 percent of the potential</p> <p>5 competitors in Texas and maybe as much as two-thirds of</p> <p>6 the national market; is that correct?</p> <p>7 A. For recruitment, yes.</p> <p>8 Q. Okay.</p> <p>9 A. If they chose to leave the business and do</p> <p>10 something other than what they were doing, you could</p> <p>11 work in that similar business, they could do that, but</p> <p>12 yeah, to -- to leave and become a recruiter that we</p> <p>13 trained them to be our business development, then yes.</p> <p>14 Q. Do you think this provision gives you an</p> <p>15 advantage with respect to your competitors?</p> <p>16 A. No. I think it allows me to really invest in the</p> <p>17 individual and to do so without limitation knowing that</p> <p>18 I'm protected at least for that year, period.</p> <p>19 Q. But you told me most of the people who leave your</p> <p>20 business don't go to work for competitors, correct?</p> <p>21 A. Because I have this provision.</p> <p>22 Q. Okay. So it's effective. Is that what you're</p> <p>23 telling me?</p> <p>24 A. Yes, it is.</p> <p>25 Q. Okay. What percentage of your new hires worked</p>
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<p>1 Q. Okay. So at least with respect to what a person</p> <p>2 can't do, you're including temporary placements even</p> <p>3 though you acknowledge that's not really the business of</p> <p>4 Merritt Hawkins, correct?</p> <p>5 A. Correct. It's -- it's the concept of recruiting</p> <p>6 physicians so really drawing the line at recruitment,</p> <p>7 but nevertheless what you're recruiting them for.</p> <p>8 Q. Okay.</p> <p>9 THE WITNESS: Do you mind if I get some</p> <p>10 water?</p> <p>11 MR. COLAO: Go ahead. You can take it off.</p> <p>12 THE WITNESS: Okay. I didn't want to tear</p> <p>13 off this thing. I'm timing you on when you think this</p> <p>14 will be done by the number of bottles of water I have.</p> <p>15 Thank you.</p> <p>16 Q. (BY MR. TILLOTSON) But for whatever investments</p> <p>17 you've made in training, so long as the employee moves</p> <p>18 outside of these counties, you're prepared to let them</p> <p>19 compete?</p> <p>20 A. I'm prepared that to be a business expense that I</p> <p>21 can live with.</p> <p>22 Q. Okay. And that's driven by the fact that your</p> <p>23 competitors are largely within these counties, correct?</p> <p>24 A. I would say for our Texas competitors, it's</p> <p>25 probably in the 80 percentile. For our national</p>	<p>1 at another placement -- doctor placement company; do you</p> <p>2 know?</p> <p>3 A. I don't, but I would -- I feel comfortable saying</p> <p>4 in a very low single-digit percentage. It's extremely</p> <p>5 rare.</p> <p>6 Q. Okay. I want to talk about clients. Are the</p> <p>7 clients that you -- that Mr. Gresham worked with, are</p> <p>8 those proprietary, the identity of those clients?</p> <p>9 A. Yes. I mean, that's not information that we --</p> <p>10 we don't release our client list publicly.</p> <p>11 Q. How does Merritt Hawkins identify prospective</p> <p>12 clients?</p> <p>13 A. What we do is begin with a database of every</p> <p>14 hospital and clinic in the country, employ a large team</p> <p>15 to be able to work either geographical or vertical</p> <p>16 territories to establish a relationship with these folks</p> <p>17 telephonically to be able to travel in their territory.</p> <p>18 One to two weeks a month to be able to conduct</p> <p>19 face-to-face meetings with them, the idea of -- to be</p> <p>20 able to discover needs and be able to sell our services,</p> <p>21 build trust, et cetera, and build these searches. And</p> <p>22 so, it's a very small world that not only allows an</p> <p>23 outside firm to do their recruitment, but to do so on a</p> <p>24 retained basis, which is what we do. So we require a</p> <p>25 pretty significant investment up front and so you -- you</p>

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<p>1 -- the work and effort of limiting that list is very  2 significant. Each -- each of these clients you work  3 with stay in touch because that need could change. The  4 intensity of the need could change and so they may say,  5 last year I only -- I do it all myself or I use only  6 contingent firms or I am willing to look at retained  7 firms maybe just Merritt Hawkins, maybe just someone  8 else, maybe 10 firms to get competitive. And so by the  9 time you get down to that narrowed list, you're very  10 protective of it because you spent so much time and  11 money getting down to -- to that group. Clients are the  12 same way. If you would ask question before if they  13 choose another organization, very uncommon they'll tell  14 me who they've chosen or why they've chosen them.  15 That's -- that's something we really want to know, but  16 everyone is just very protective of that data.  17 Q. Is it a competitive business?  18 A. Very.  19 Q. How many competitors do you think you have?  20 A. Hundreds. Meaning that's either probably a group  21 of 8 or 10 of any size, but it's a very fragmented  22 business.  23 Q. I understand. Did -- what percentage of Merritt  24 Hawkins is retained searches?  25 A. A hundred percent.</p>	<p>1 always willing to publish that kind of access  2 information for all of the obvious reasons of everyone  3 approaching them. The other issue is that it is  4 commonly a different person, a different title, a  5 different tier within each, either facility or  6 organization that makes that decision. And once you  7 have that data, the ability to be effective, efficient  8 and successful is -- is much higher. That data -- that  9 data is extremely valuable.  10 Q. Okay. Do you have any reason to believe that  11 Mr. Gresham took any client list from --  12 A. Absolutely.  13 Q. Okay.  14 A. That list that you showed me, there was a big  15 portion, that downloaded client list from his region.  16 Q. Okay. Identifications of clients or documents  17 where clients' names were on them?  18 A. It would've had -- it should've consisted with a  19 combination there with -- using the identity provided in  20 that file with the client -- those client files would  21 commonly have location, contact information for your  22 specific client and then details about a given search.  23 Q. Okay. What's the value, if you know, in dollars  24 and cents of the information you claim Mr. Gresham  25 copied?</p>
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<p>1 Q. Okay. So you don't do any contingent fee  2 services?  3 A. Not secure. We can do, to be specific, a  4 contingent search if we were secure to find two and we  5 have an extra candidate. That would be a contingent  6 search or a spouse comes along, but nothing potentially.  7 Q. Is the fee hourly or is it based upon the search  8 being completed?  9 A. It's a hybrid. Roughly -- I think it's fair to  10 say that roughly 50 percent of our fee comes at either a  11 monthly or hourly engagement and the rest is success  12 driven.  13 Q. Okay. And is every client of Merritt Hawkins  14 publicly known, not that they're your client, but I take  15 it that there aren't any secret or not publicly  16 available identities for hospitals or providers?  17 A. No. It's the -- the value there -- Baylor's in  18 the phonebook if someone wanted to call Baylor.  19 Q. Right.  20 A. The issue you would encounter is that's not the  21 person who makes the decision and that's not the person  22 who's going to talk to you.  23 Q. Is the identity of those people that make the  24 decision at the various providers publicly known?  25 A. Not always. The issue there is executives aren't</p>	<p>1 A. Looking at that list between having detailed  2 client list of the region, quite a large number of  3 candidate files, specifically CVs, cover letters, et  4 cetera, while difficult to put a fee on, or put a number  5 on, a value on, to me it would be in the hundreds of  6 thousands. Simply if you took the candidates, we could  7 go back and count those candidates. But if it had gone  8 far enough in the process that a candidate has given you  9 his curriculum vitae, he had discussed it in a great  10 enough detail to provide a cover letter and you would  11 forward that to a client, it's somebody looking for a  12 job.  13 Q. Do you know if any of those were old files like  14 of people that replaced versus people for which there  15 were actually searches ongoing for?  16 A. In terms of those specific candidates, I can only  17 assume they were active. There's no motivation to have  18 a storage of people you've placed from years back. We  19 could find that out pretty quickly.  20 Q. Did -- didn't employees keep copies of documents  21 on their hard drive on their computers?  22 A. Some of them did.  23 Q. Okay. So it's at least possible that some of  24 those reflected old candidates that had been previously  25 placed or considered but not active; is that correct?</p>

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<p>1 A. Possible. The question that I ask is why.</p> <p>2 Q. We'll get to that. I think Mr. Gresham may be</p> <p>3 the best person to answer that. So let's just stick</p> <p>4 with what you and I can do here.</p> <p>5 A. Okay.</p> <p>6 Q. How do you calculate a value then for that</p> <p>7 information based upon what you know?</p> <p>8 A. The overall fee for placing a physician is you</p> <p>9 know, in the low -- the low 20s to low \$30,000 range.</p> <p>10 And so to be able to take these clients, at least my</p> <p>11 assumption, the only reason to take them is not for</p> <p>12 historical references or Christmas card list but to get</p> <p>13 a value from them and to be able to take those clients</p> <p>14 -- those candidates and attempt to do something with</p> <p>15 them in terms of placing them. You know, you only have</p> <p>16 to place, you know, five to 10 to get in that 150 to</p> <p>17 \$300,000 range. The client list is another issue.</p> <p>18 Those client lists are -- are quite -- a much more</p> <p>19 valuable list to really rifle into an organization, I</p> <p>20 say, you're the person to call. I know what your needs</p> <p>21 are, both potentially and future needs, and all I have</p> <p>22 to do is call you and convince you to turn from Merritt</p> <p>23 Hawkins to my firm. That's very valuable.</p> <p>24 Q. If -- if -- if it was demonstrated that Consilium</p> <p>25 had done no permanent placements during the time period</p>	<p>1 A. If they haven't reached them or attempted to do</p> <p>2 business with them.</p> <p>3 Q. Okay.</p> <p>4 A. That's different.</p> <p>5 Q. Thank you. Were -- were you the one who -- do</p> <p>6 you know how much money was spent to try and recreate,</p> <p>7 salvage the information that Mr. Gresham deleted on his</p> <p>8 computer?</p> <p>9 A. Yes. I'm aware of that cost.</p> <p>10 Q. I mean, did you pay that bill or authorize the</p> <p>11 payment on that bill?</p> <p>12 A. I would have been involved in the authorization,</p> <p>13 yes.</p> <p>14 Q. Okay. Do you know how much it was?</p> <p>15 A. It was approximately \$30,000.</p> <p>16 Q. Was this to the outside firm?</p> <p>17 A. It was.</p> <p>18 Q. Any other cost other than to the outside firm?</p> <p>19 A. I know we had additional -- well, the total cost</p> <p>20 reflect -- it was 30,000 and change. There -- I do</p> <p>21 believe there was some internal cost associated with</p> <p>22 that albeit a small part of that -- that number.</p> <p>23 Q. Is there -- is there a policy at Merritt Hawkins</p> <p>24 that prevents people from deleting anything on their</p> <p>25 computer?</p>
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<p>1 in which Mr. Gresham -- Mr. Gresham was employed by</p> <p>2 Consilium, would the value then of those doctors, CVs,</p> <p>3 et cetera, change in your mind?</p> <p>4 A. It's likely. I think as you look at this, it's a</p> <p>5 value of what people have done versus what they're going</p> <p>6 to do.</p> <p>7 Q. Okay. So for at least for the doctor</p> <p>8 information, the value of that information is the</p> <p>9 ability to use it, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. There's no intrinsic value of having a doctor's</p> <p>12 resume, right? It's just can you make a placement?</p> <p>13 A. Correct.</p> <p>14 Q. And so if no placements were made from that</p> <p>15 information, at least nominally that information would</p> <p>16 have a zero value as we sit here today, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. The client lists, you say, are valuable,</p> <p>19 but because people can then contact the individual at</p> <p>20 that particular hospital or whatever, correct?</p> <p>21 A. Uh-huh.</p> <p>22 Q. So if no contacts were made to any of those</p> <p>23 hospitals by Mr. Gresham, wouldn't you agree that the</p> <p>24 value of those client lists as we sit here today is</p> <p>25 zero?</p>	<p>1 A. In terms of deleting things, no. In terms of</p> <p>2 protecting work product, yes.</p> <p>3 Q. Sure. I'm going to put copy aside, but I just</p> <p>4 want to focus on deleting.</p> <p>5 A. Okay.</p> <p>6 Q. Is there to your knowledge, are employees trained</p> <p>7 or told don't delete anything from your computer?</p> <p>8 A. What people are told -- or what they put in their</p> <p>9 employment agreement -- in fact, I believe, was</p> <p>10 Mr. Gresham it was the third article of the document</p> <p>11 that says anything that you create and without -- I'm</p> <p>12 not a lawyer and without getting into all of the</p> <p>13 legalese --</p> <p>14 Q. Sure.</p> <p>15 A. -- is the product of the company and there's</p> <p>16 implication if it's mine I could assume you wouldn't</p> <p>17 walk by the desk and take a sledgehammer to it or you</p> <p>18 know, throw your -- throw your hard drive down. You</p> <p>19 wouldn't damage things that are mine.</p> <p>20 Q. So you don't delete e-mails, for example?</p> <p>21 A. Oh, I certainly do.</p> <p>22 Q. Okay. So materials -- if Mr. Gresham created</p> <p>23 e-mails or prepared e-mails and sent them, but then</p> <p>24 deleted them because he didn't feel he needed them,</p> <p>25 would he have violated his employment agreement in your</p>

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Mark Smith

May 20, 2014

Page 130	Page 132
<p>1 mind?</p> <p>2 A. Well, only if the situation was that he -- if I</p> <p>3 were to decide to leave Merritt Hawkins and I thought</p> <p>4 the best way to do that is come in on a Sunday afternoon</p> <p>5 in a clandestine fashion and then delete all this data</p> <p>6 from my computer, something I hadn't done before and</p> <p>7 then resign the next day, that's an issue.</p> <p>8 Q. Okay. You know Mr. Gresham no longer works for</p> <p>9 Consilium, correct?</p> <p>10 A. I've heard that, yes.</p> <p>11 Q. Okay. Why is Merritt Hawkins still suing</p> <p>12 Mr. Gresham if he no longer works for Consilium?</p> <p>13 A. Because there is damage to what he has done. And</p> <p>14 to do what Mr. Gresham did in this case, which was to</p> <p>15 destroy work product at a very significant level, there</p> <p>16 are a thousand documents there in question between</p> <p>17 what's deleted and what's copied and I'm relying on the</p> <p>18 experts to do that. That's not an area of my expertise</p> <p>19 or to pretend that it is and to do so in this</p> <p>20 clandestine, sneaky fashion coming in on a Sunday</p> <p>21 afternoon deleting all of this information, copying a</p> <p>22 large quantity of other information, that damage is</p> <p>23 still done. And to me, you know, that -- it's a</p> <p>24 combination that -- that's an unjust event and there</p> <p>25 needs to be -- there's a punishment associated with</p>	<p>1 deposition which I'm going to fully request from your</p> <p>2 counsel. So I'm going to conclude your deposition now,</p> <p>3 but I'm going to for the record say I reserve time in</p> <p>4 case those materials require me to ask you additional</p> <p>5 questions, but I appreciate you here today and that's</p> <p>6 all I have for now. I pass the witness.</p> <p>7 MR. COLAO: Okay. No -- no questions at</p> <p>8 this time. We'll reserve our questions for the time of</p> <p>9 trial.</p> <p>10 THE VIDEOGRAPHER: All right. Going off the</p> <p>11 record at 12:44 p.m.</p> <p>12 (Deposition concluded at 12:44 p.m.)</p>
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<p>1 that, whether that is to be accomplished on a civil</p> <p>2 basis or if it's accomplished on a criminal basis.</p> <p>3 That's just not something that you can do. I -- I can't</p> <p>4 stand for that to occur.</p> <p>5 Q. Okay. Last couple of questions and I'll release</p> <p>6 you. Are there -- can you identify, if you can, any</p> <p>7 clients of Merritt Hawkins that you believe were</p> <p>8 wrongfully solicited by Mr. Gresham after he departed</p> <p>9 Merritt Hawkins and while he work for Consilium?</p> <p>10 A. I'm not aware of that information, no.</p> <p>11 Q. Okay. Because you had mentioned earlier that the</p> <p>12 agreement restricts you from wherever you live from</p> <p>13 contacting the same customers you used to call --</p> <p>14 A. Correct.</p> <p>15 Q. -- before he left, but as we sit here today there</p> <p>16 is no evidence to suggest Mr. Gresham violated that</p> <p>17 particular provision, correct?</p> <p>18 A. I'm not aware of any specific folks, no.</p> <p>19 Q. Okay. And you don't have any -- do you have as</p> <p>20 we sit here today, any evidence to suggest that</p> <p>21 Consilium used any of the information you claimed</p> <p>22 Mr. Gresham copied?</p> <p>23 A. I do not have that knowledge, no.</p> <p>24 MR. TILLOTSON: Okay. All right. There are</p> <p>25 some materials that you've identified today in your</p>	<p>1 THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 MERRITT HAWKINS &amp; )</p> <p>5 ASSOCIATES, LLC, )</p> <p>6 Plaintiff, )</p> <p>7 ) CIVIL ACTION NO.</p> <p>8 VS. ) 13-CV-00312-P</p> <p>9 )</p> <p>10 LARRY SCOTT GRESHAM AND )</p> <p>11 BILLY BOWDEN, )</p> <p>12 Defendants. )</p> <p>13</p> <p>14 REPORTER'S CERTIFICATION</p> <p>15 DEPOSITION OF MARK SMITH</p> <p>16 MAY 20, 2014</p> <p>17</p> <p>18 I, LEI SHERRA TORRENCE, Certified Shorthand</p> <p>19 Reporter in and for the State of Texas, hereby certify</p> <p>20 to the following:</p> <p>21 That the witness, MARK SMITH, was duly sworn</p> <p>22 by the officer and that the transcript of the oral</p> <p>23 deposition is a true record of the testimony given by</p> <p>24 the witness;</p> <p>25 I further certify that pursuant to FRCP Rule</p> <p>30 (f) (1) that the signature of the deponent:</p> <p>_____ was requested by the deponent or a</p> <p>party before the completion of the deposition and is to</p> <p>be returned within 30 days from date of receipt of the</p> <p>transcript. If returned, the attached Changes and</p>

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Mark Smith

May 20, 2014

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1 Signature Page contains any changes and the reasons  
2 therefor;

3 \_\_\_X\_\_\_ was not requested by the deponent or a  
4 party before the completion of the deposition.

5 I further certify that I am neither counsel  
6 for, related to, nor employed by any of the parties or  
7 attorneys to the action in which this proceeding was  
8 taken. Further, I am not a relative or employee of any  
9 attorney or record in this cause, nor am I financially  
10 or otherwise interested in the outcome of the action.

11  
12 Subscribed and sworn to on this the 27th day  
13 of May, 2014.

14  
15   
16



17 Lei Sherra Torrence, CSR  
18 Texas CSR No. 7836  
19 Expiration Date: 12/31/2014  
20 Firm Registration No. 631  
21 Kim Tindall & Associates, LLC  
22 645 Lockhill Selma, Suite 200  
23 San Antonio, Texas 78216  
24 (210) 697-3400  
25 (210) 697-3408 (Fax)

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Kim Tindall and Associates, LLC  
210-697-3400

645 Lockhill Selma, Suite 200

San Antonio, Texas 78216  
210-697-3408

APP. 0036

Transcript of the Testimony of  
**Tim Beidle**

**Date:**

May 16, 2014

**Case:**

Merritt Hawkins & Associates v. Larry Scott Gredham, et al

Kim Tindall and Associates, LLC

Phone: 210-697-3400

Fax: 210-697-3408

Email: ktindall@ktanda.com

Internet: [www.kimtindallandassociates.com](http://www.kimtindallandassociates.com)

Page 1

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MERRITT HAWKINS &	)	
ASSOCIATES, LLC,	)	
Plaintiff,	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	13-CV-00312-P
LARRY SCOTT GRESHAM AND	)	
BILLY BOWDEN,	)	
Defendants.	)	

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ORAL AND VIDEOTAPED DEPOSITION OF  
  
TIM BEIDLE  
  
MAY 16, 2014  
  
VOLUME I  
  
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ORAL AND VIDEOTAPED DEPOSITION OF TIM BEIDLE,  
produced as a witness at the instance of the DEFENDANTS,  
and duly sworn, was taken in the above-styled and  
numbered cause on May 16, 2014, from 9:58 a.m. to 1:35  
p.m., before Lei Sherra Torrence, CSR in and for the  
State of Texas, reported by machine shorthand, at the  
offices of Merritt Hawkins & Associates, 5001 Statesman  
Drive, Irving, Texas, pursuant to the Federal Rules of  
Civil Procedure and the provisions stated on the record  
or attached hereto.



Tim Beidle

May 16, 2014

Page 2	Page 4
<p>1 APPEARANCES</p> <p>2</p> <p>3 COUNSEL FOR THE PLAINTIFF:</p> <p>4 Ms. Christine Nowak</p> <p>5 DYKEMA GOSSET PLLC</p> <p>6 Comerica Bank Tower</p> <p>7 1717 Main Street</p> <p>8 Suite 4000</p> <p>9 Dallas, Texas 75201</p> <p>10 (214) 462-6400</p> <p>11 (214) 462-6401 (fax)</p> <p>12 Cnowak@dykema.com</p> <p>13 COUNSEL FOR THE DEFENDANTS:</p> <p>14 Mr. John Volney</p> <p>15 LYNN TILLOTSON PINKER &amp; COX, LLP</p> <p>16 2100 Ross Avenue</p> <p>17 Suite 2700</p> <p>18 Dallas, Texas 75201</p> <p>19 (214) 981-3800</p> <p>20 (214) 981-3839 (fax)</p> <p>21 Jvolney@lynnllp.com</p> <p>22 THE VIDEOGRAPHER:</p> <p>23 Ms. Keri Livingston</p> <p>24 ALSO PRESENT:</p> <p>25 Ms. Whitney Laughlin</p>	<p>1 THE VIDEOGRAPHER: Good morning. We are now</p> <p>2 on the record. Today's date is May 16th, 2014, and the</p> <p>3 time is 9:58 a.m. We are located at the offices of</p> <p>4 Merritt Hawkins at 5001 Statesman Drive in Irving, Texas</p> <p>5 for the video deposition of Tim Beidle in the matter of</p> <p>6 Merritt Hawkins and Associates versus Larry Scott</p> <p>7 Gresham, et al. The cause number is 13-CV-00312-P. My</p> <p>8 name is Keri Livingston. I am the legal videographer.</p> <p>9 This is our court reporter Lei Sherra Torrence. We're</p> <p>10 both with Kim Tindall &amp; Associates. If counsel will</p> <p>11 please introduce yourselves and state any agreements for</p> <p>12 the record, our court reporter will then swear in the</p> <p>13 witness.</p> <p>14 MR. VOLNEY: John Volney for the defendants.</p> <p>15 MS. NOWAK: Christine Nowak of Dykema Gosset</p> <p>16 for the plaintiff Merritt Hawkins and Associates.</p> <p>17 TIM BEIDLE,</p> <p>18 having been first duly sworn, testified as follows:</p> <p>19 EXAMINATION</p> <p>20 BY MR. VOLNEY:</p> <p>21 Q. Mr. Beidle, my name is John Volney. I'm here</p> <p>22 from the law firm of Lynn Tillotson Pinker &amp; Cox to take</p> <p>23 your deposition in connection with the lawsuit that your</p> <p>24 employer Merritt Hawkins has filed against Larry Scott</p> <p>25 Gresham and Billy Bowden. Do you understand that?</p>
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<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4 TIM BEIDLE</p> <p>5 Examination by Mr. Volney..... 4</p> <p>6 Examination by Ms. Nowak.....117</p> <p>7 Reporter's Certificate.....126</p> <p>8 EXHIBITS</p> <p>9 NUMBER DESCRIPTION PAGE</p> <p>10 107 Plaintiff's Original Complaint 50</p> <p>11 108 E-mail from Scott Gresham 68</p> <p>12 109 E-mail Re: Community Worksheet 73</p> <p>13 110 E-mail Re: Meetings Next Week 83</p> <p>14 111 E-mail Re: Hoopeston 84</p> <p>15 112 E-mail Re: Smith4981@gmail.com 85</p> <p>16 113 Employment Agreement 105</p>	<p>1 A. I do.</p> <p>2 Q. Have you given a deposition before?</p> <p>3 A. I have.</p> <p>4 Q. How many times?</p> <p>5 A. Once.</p> <p>6 Q. Was it in connection with your employment at</p> <p>7 Merritt Hawkins?</p> <p>8 A. It was.</p> <p>9 Q. Can you tell me the name of the case, if you</p> <p>10 know?</p> <p>11 A. I don't know. It was probably about eight years</p> <p>12 ago.</p> <p>13 Q. Eight years ago. Do you remember the names of</p> <p>14 any of the parties?</p> <p>15 A. I do not.</p> <p>16 Q. Was it an employment-related dispute?</p> <p>17 A. It was about an ex-employee.</p> <p>18 Q. It was an ex-employee. Was Merritt Hawkins suing</p> <p>19 the ex-employee?</p> <p>20 A. No. I honestly don't know the details. It was</p> <p>21 just hearsay that I had heard and they had asked for me</p> <p>22 to come in and explain some information pertaining to</p> <p>23 it.</p> <p>24 Q. Okay. How long have you been with Merritt</p> <p>25 Hawkins?</p>

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Kim Tindall and Associates, LLC  
210-697-3400

645 Lockhill Selma, Suite 200

San Antonio, Texas 78216  
210-697-3408

APP. 0039

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Tim Beidle

May 16, 2014

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<p>1 A. Fourteen years.</p> <p>2 Q. Where were you employed before Merritt Hawkins?</p> <p>3 A. I was.</p> <p>4 Q. Before your 14 years. Before you started at</p> <p>5 Merritt Hawkins where did you work, I guess I should</p> <p>6 say?</p> <p>7 A. I was a schoolteacher.</p> <p>8 Q. Schoolteacher. How long --</p> <p>9 A. In California.</p> <p>10 Q. In California. What did you teach?</p> <p>11 A. I taught sixth grade for a year. That was</p> <p>12 enough.</p> <p>13 Q. That was enough. And then did you go to work for</p> <p>14 Merritt Hawkins --</p> <p>15 A. I did.</p> <p>16 Q. -- in its San Diego office?</p> <p>17 A. No, sir. Here. I relocated.</p> <p>18 Q. And what did you start out doing for Merritt</p> <p>19 Hawkins?</p> <p>20 A. I worked on the Allied Consulting side</p> <p>21 recruiting.</p> <p>22 Q. What is Allied Consulting?</p> <p>23 A. We recruit mid levels. Anything aside from a</p> <p>24 physician, your pharmacist, physical therapist, rad</p> <p>25 techs.</p>	<p>1 A. That's placing physicians at hospitals that we</p> <p>2 were retained by on a permanent level.</p> <p>3 Q. All right. And what is your -- did you have</p> <p>4 another title after that?</p> <p>5 A. Yes.</p> <p>6 Q. What was it?</p> <p>7 A. Vice president.</p> <p>8 Q. You said you were a director?</p> <p>9 A. Senior director and then I was promoted to vice</p> <p>10 president.</p> <p>11 Q. Okay. And what's your current title?</p> <p>12 A. Vice president.</p> <p>13 Q. Vice president. Okay. And what is your</p> <p>14 responsibility as a vice president?</p> <p>15 A. It is to lead a team. I oversee the Heartland</p> <p>16 region and it's basically monitoring activity, making</p> <p>17 sure client relations are -- are up to par, deal with</p> <p>18 budgets, revenue, make sure that the revenue streams are</p> <p>19 -- and metrics are being met.</p> <p>20 Q. Okay. When you say Heartland, what does that</p> <p>21 mean?</p> <p>22 A. It's Heartland.</p> <p>23 Q. Heartland. Sorry. Is that -- I take it that's a</p> <p>24 geographical region?</p> <p>25 A. It is.</p>
Page 7	Page 9
<p>1 Q. Okay. On a permanent or a --</p> <p>2 A. Permanent.</p> <p>3 Q. Permanent basis. And then after you worked for</p> <p>4 Allied where did you go?</p> <p>5 A. I went to Merritt Hawkins.</p> <p>6 Q. Okay. Merritt Hawkins, what year was that?</p> <p>7 A. That was in 2000 -- I'm trying to remember. It</p> <p>8 was 2006. 2006.</p> <p>9 Q. So you've been with Merritt Hawkins since 2006?</p> <p>10 A. That's correct.</p> <p>11 Q. Now for your entire 14 years of working for</p> <p>12 Allied and Merritt Hawkins have you worked in this</p> <p>13 building in effect?</p> <p>14 A. No, sir. I had another location when I first</p> <p>15 started.</p> <p>16 Q. Okay. But your entire career for the AMN</p> <p>17 affiliated companies has been here in Irving?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. Okay. So when you started with</p> <p>20 Merritt Hawkins in 2006, what did you start doing?</p> <p>21 A. I was a senior director and I was doing physician</p> <p>22 recruitment. I was still doing some recruiting. Most</p> <p>23 of my responsibilities was training and leadership.</p> <p>24 Q. Okay. When you say physician recruitment, what</p> <p>25 is that?</p>	<p>1 Q. What is the Heartland region?</p> <p>2 A. It encompasses the seven states: Colorado,</p> <p>3 Oklahoma, Nebraska, Illinois and Missouri and Arkansas.</p> <p>4 Q. Correct me if I'm wrong, but I'm assuming that</p> <p>5 means that you are -- that Merritt Hawkins is attempting</p> <p>6 to place physicians on a permanent basis in the</p> <p>7 Heartland region?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And that's what your team does?</p> <p>10 A. Yes, sir.</p> <p>11 Q. But the -- are the -- who hires Merritt Hawkins?</p> <p>12 Is it the facility, the hospital or is it the doctor who</p> <p>13 is looking for permanent placement?</p> <p>14 A. The facility.</p> <p>15 Q. The facility. Okay. How does Merritt Hawkins</p> <p>16 identify the -- its facility clients?</p> <p>17 A. Through the marketing consultants who are out</p> <p>18 canvassing their territories.</p> <p>19 Q. Okay. So are the marketing consultants a</p> <p>20 separate group at Merritt Hawkins?</p> <p>21 A. Separate in the fact that you have marketers who</p> <p>22 go out into their territories and they're the ones that</p> <p>23 are making relationships with clients and then once the</p> <p>24 business is brought in, recruiting basically takes over</p> <p>25 and finds physicians for the opportunities.</p>

3 (Pages 6 to 9)

Tim Beidle

May 16, 2014

Page 10	Page 12
<p>1 Q. All right. And are you responsible for</p> <p>2 overseeing the marketing consultants?</p> <p>3 A. No, sir.</p> <p>4 Q. Who does that?</p> <p>5 A. Rich Gherke.</p> <p>6 Q. Is that also located here in Irving?</p> <p>7 A. Yes.</p> <p>8 Q. Gherke, G -- sorry.</p> <p>9 A. G-H-E-R-K-E.</p> <p>10 Q. Now, are you familiar with how the marketing</p> <p>11 consultants identify the potential facility clients?</p> <p>12 A. Yes, very.</p> <p>13 Q. So tell me. Explain to me how they do that.</p> <p>14 A. They go out, each marketer -- we have a total of</p> <p>15 three marketers. Each marketer has a specific</p> <p>16 territory within the Heartland region. So it's usually</p> <p>17 a two-state territory and they travel two weeks out of</p> <p>18 the month. Two weeks here in the office creating</p> <p>19 meetings and then the other two weeks out on the road</p> <p>20 conducting those meetings.</p> <p>21 Q. Is there a -- is there a -- is there a database</p> <p>22 of information of potential facility clients that is</p> <p>23 maintained by Merritt Hawkins?</p> <p>24 A. There is.</p> <p>25 Q. What's it called?</p>	<p>1 was gleaned from the prior business relationship between</p> <p>2 Merritt Hawkins and the client?</p> <p>3 A. Could be or just past communications that we had</p> <p>4 with that client that may not have utilized our services</p> <p>5 at that point and time, but we have notes in there as</p> <p>6 far as what they're doing as far as recruitment at that</p> <p>7 period of time.</p> <p>8 Q. So if a contact is made between your marketing</p> <p>9 consultant and the particular facility the expectation</p> <p>10 is that they would then put some of that information</p> <p>11 into the Mhacs database?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Does the Mhacs database include</p> <p>14 information about potential clients?</p> <p>15 A. It does.</p> <p>16 Q. What information does it include about potential</p> <p>17 clients?</p> <p>18 A. Generally just meetings that were conducted, what</p> <p>19 -- what occurred during that meeting or even phone calls</p> <p>20 as far as going over our -- our information and kind of</p> <p>21 where they're at as far as making decisions as far as</p> <p>22 utilizing Merritt Hawkins and what they're doing</p> <p>23 currently as far as recruitment.</p> <p>24 Q. Okay. So the marketing consultants do some</p> <p>25 amount of prospect for new clients?</p>
Page 11	Page 13
<p>1 A. We have a hospital bluebook and that's a national</p> <p>2 publication. It has basically all of the hospitals</p> <p>3 throughout the United States.</p> <p>4 Q. Okay. Is there any other?</p> <p>5 A. Mhacs -- we use an in-house program called Mhacs</p> <p>6 that has past clients, clients we've worked with, new</p> <p>7 clients, et cetera.</p> <p>8 Q. Okay. So there's a -- I take it the hospital</p> <p>9 bluebook is available to anyone that wants to go out and</p> <p>10 purchase it?</p> <p>11 A. That's correct.</p> <p>12 Q. And then the information that's in Mhacs, does it</p> <p>13 include the information that's in the hospital bluebook?</p> <p>14 A. To a certain level but most of the stuff that's</p> <p>15 in Mhacs is going to be much more extensive than what</p> <p>16 you'd find in the bluebook. Bluebook is only going to</p> <p>17 include essentially the name of the hospital, either the</p> <p>18 contact person being the CEO and an address and phone</p> <p>19 number.</p> <p>20 Q. Okay. Is the information in Mhacs -- does it --</p> <p>21 well, let me back up. You mentioned that some part of</p> <p>22 the information that's contained in Mhacs is related to</p> <p>23 past clients?</p> <p>24 A. Some of it is, yes.</p> <p>25 Q. Some of it is. Is that just the information that</p>	<p>1 A. Oh, absolutely.</p> <p>2 Q. And do the market consultants use -- the</p> <p>3 marketing consultants do they use the Internet to do</p> <p>4 research about the particular facilities?</p> <p>5 A. Some, yes.</p> <p>6 Q. Can you find information about the people in</p> <p>7 charge at the facilities of physician recruitment from</p> <p>8 the Internet?</p> <p>9 A. Can you explain that one more time?</p> <p>10 Q. Like if I -- let's say I wanted to place a</p> <p>11 physician at Scott and White Hospital in Temple, Texas</p> <p>12 or any other facility, would I be able to go on the</p> <p>13 Internet in some cases and find out who I need to call</p> <p>14 to ask if they'd be interested in Merritt Hawkins</p> <p>15 services?</p> <p>16 A. To a certain level.</p> <p>17 Q. All right. I take it that neither Gresham nor</p> <p>18 Bowden were marketing consultants?</p> <p>19 A. Correct.</p> <p>20 Q. What was their title at Merritt Hawkins?</p> <p>21 A. Search consultant.</p> <p>22 Q. What does a search consultant do?</p> <p>23 A. Recruit physicians.</p> <p>24 Q. How does a search consultant recruit physicians?</p> <p>25 A. Through the efforts of our marketing campaign,</p>

4 (Pages 10 to 13)

Tim Beidle

May 16, 2014

Page 14	Page 16
<p>1 utilization of Mhacs. As I mentioned before, marketing</p> <p>2 brings in the searches, recruiting then is responsible</p> <p>3 for going out profiling the opportunity and filling the</p> <p>4 opportunity.</p> <p>5 Q. So if there's a hospital in Nebraska that's in</p> <p>6 need of a general practitioner, I take it the hospital</p> <p>7 then signs some sort of agreement with Merritt Hawkins?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And under that agreement Merritt Hawkins --</p> <p>10 Merritt Hawkins agrees to consult -- to -- to do what, I</p> <p>11 should ask, since you know better than I do?</p> <p>12 A. Well, we have the agreement and then it's --</p> <p>13 essentially we're a retained staffing firm, meaning that</p> <p>14 they pay us an upfront retainer. There's an hourly,</p> <p>15 monthly billing associated to that and then a placement</p> <p>16 fee. Once that search is brought in, as I mentioned we</p> <p>17 go out and profile the opportunity and meet with the</p> <p>18 administration, meet with the key decision makers and</p> <p>19 then gather information as far as what they're looking</p> <p>20 for particular to that opportunity. We go over our</p> <p>21 44-step process with the client as far as what Merritt</p> <p>22 Hawkins is going to do and then we come back here to our</p> <p>23 facility and begin the recruitment efforts.</p> <p>24 Q. Okay. And how does Merritt Hawkins search</p> <p>25 consultants go about finding potential placements,</p>	<p>1 A. Potential opportunities.</p> <p>2 Q. Potential opportunities.</p> <p>3 A. Correct.</p> <p>4 Q. And then does Merritt Hawkins then -- does it use</p> <p>5 any third-party web sites to --</p> <p>6 A. Yes.</p> <p>7 Q. -- advertise?</p> <p>8 A. We do.</p> <p>9 Q. Okay. Give me an idea. Can you tell me the</p> <p>10 names of two or three of those?</p> <p>11 A. Healthy careers, dot, cafe. Those are really the</p> <p>12 two primarily that we use.</p> <p>13 Q. Okay. Similar to the hospital bluebook is there</p> <p>14 a publically available database that Merritt Hawkins</p> <p>15 uses to identify physicians?</p> <p>16 A. No, sir.</p> <p>17 Q. How does Merritt Hawkins go about identifying</p> <p>18 physicians for placement?</p> <p>19 A. Again, we usually identify candidates through</p> <p>20 Mhacs our own database as well the marketing campaign</p> <p>21 that goes out where physicians respond to that letter,</p> <p>22 and at that point we're able to present the opportunity</p> <p>23 to that physician.</p> <p>24 Q. Thank you. I guess I'm trying to understand.</p> <p>25 Did -- did Merritt Hawkins -- does it create its</p>
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<p>1 potential physicians to fill the roles that Merritt</p> <p>2 Hawkins --</p> <p>3 A. Sure.</p> <p>4 Q. -- is being asked to fill?</p> <p>5 A. We've got a lot of different angles towards that.</p> <p>6 Our biggest resource is through our direct mail. We</p> <p>7 used to do an advertising campaign for each opportunity</p> <p>8 we represent. The client pays for that. It's an</p> <p>9 out-of-pocket expense on behalf of the client and we'll</p> <p>10 do the marketing campaign specific to that opportunity.</p> <p>11 We also utilize our Mhacs and that's our database. It</p> <p>12 has thousands of physicians' names particular to each</p> <p>13 opportunity, our specialty and we also use our web site,</p> <p>14 different search engines. We post it on a lot of</p> <p>15 different web sites.</p> <p>16 Q. Are those proprietary web sites to Merritt</p> <p>17 Hawkins?</p> <p>18 A. Ours is, yes.</p> <p>19 Q. You use --</p> <p>20 A. -- would be not.</p> <p>21 Q. I'm sorry. I was -- my fault entirely. I didn't</p> <p>22 hear the very last part of what you said. I'm assuming</p> <p>23 Merritt Hawkins has its own web site --</p> <p>24 A. Yes.</p> <p>25 Q. -- where it advertises potential placements?</p>	<p>1 database of physician names and addresses from scratch?</p> <p>2 A. Well, I mean the database is something that</p> <p>3 started from the onset. So I mean, it's physicians who</p> <p>4 responded to marketing pieces, it's physicians that, you</p> <p>5 know, we've found throughout the years of just, you</p> <p>6 know, perusing and reaching other doctors. Some of them</p> <p>7 have been referrals for other physicians.</p> <p>8 Q. Right.</p> <p>9 A. There's a whole glomerate of areas where we get</p> <p>10 these physicians and then each physician that calls in</p> <p>11 or each physician that we speak to we create a new</p> <p>12 record for if there's not already a record created.</p> <p>13 Q. So is there any effort by the search consultants</p> <p>14 to identify doctors in the publicly available means?</p> <p>15 A. There is some.</p> <p>16 Q. Okay. How would they do that?</p> <p>17 A. Well, I mean there's different journals that we</p> <p>18 can place ads in depending on specialty, you know, we've</p> <p>19 posted information through different residency programs</p> <p>20 and fellowships.</p> <p>21 Q. Right.</p> <p>22 A. So really it was kind of the areas that we may</p> <p>23 utilize.</p> <p>24 Q. Thank you. Does Merritt Hawkins go out and sort</p> <p>25 of my -- state level physician records like at -- I</p>

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<p>1 think it's called the Texas Medical Board. Do they 2 publish or provide a list of the doctors who are 3 licensed in Texas?</p> <p>4 A. No.</p> <p>5 Q. Okay. So to your knowledge there's no publicly 6 available database of physicians who were licensed to 7 practice in the United States -- any state in the United 8 States.</p> <p>9 A. Yeah, you can buy the list through the AMA, 10 American Medical Association. We can buy those lists 11 and generally that's where the list comes from for the 12 source.</p> <p>13 Q. Okay. So some of the addresses that the direct 14 mail pieces are sent to might come from an AMA list?</p> <p>15 A. Yes, correct.</p> <p>16 Q. Okay. Might not be because you have previously 17 contacted a particular physician, but it might be from 18 that sort of information you get from the AMA?</p> <p>19 A. Correct.</p> <p>20 Q. All right. Let's see. So you've given a 21 deposition before. It's been about eight years. So I 22 want to go over a little bit of the ground rules now 23 that we've gotten started a little bit. Do you 24 understand -- I'm sure that you're obligated to tell the 25 truth in this deposition?</p>	<p>1 experience has been with AMN, correct?</p> <p>2 A. Yes. And there was a brief stint that I worked 3 with Minolta Business Solutions and that was a copier 4 service. That was essentially my first job out of 5 college and I then went into teaching and that was -- 6 and that was short.</p> <p>7 Q. Do you consider yourself an expert -- well, never 8 mind. Do you consider yourself knowledgeable about the 9 permanent staffing industry?</p> <p>10 A. I do, very.</p> <p>11 Q. Okay. I take it you also consider yourself very 12 knowledgeable about medical staffing in general?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Now, who -- who were the competitors of Merritt 15 Hawkins?</p> <p>16 A. Not many. I mean, there's a select few, Delta, 17 Fidelus, MD firm. And there's just very, very small 18 companies out there that -- that compete.</p> <p>19 Q. Is -- is the company Jackson Coker a competitor 20 of Merritt Hawkins?</p> <p>21 A. Yes.</p> <p>22 Q. Where are they located?</p> <p>23 A. I believe in Atlanta.</p> <p>24 Q. Atlanta. Is Arthur Marshall a competitor of 25 Merritt Hawkins?</p>
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<p>1 A. Uh-huh.</p> <p>2 Q. Yes?</p> <p>3 A. Yes.</p> <p>4 Q. I like for you to answer verbally. She can't -- 5 she has trouble taking down uh-huh, although, it's 6 perfectly natural and I understand. I'll prompt you if 7 I think I need a yes.</p> <p>8 A. Okay.</p> <p>9 Q. If I ask you a question you don't understand, 10 will you please stop me and ask me to explain?</p> <p>11 A. I will.</p> <p>12 Q. Okay. And similarly -- well, let's see. I heard 13 you mention before we started that you went to the 14 University of Southern California?</p> <p>15 A. I did briefly. I graduated from Cal State 16 Northridge.</p> <p>17 Q. Okay. Cal State Northridge. Is that outside of 18 LA?</p> <p>19 A. It is.</p> <p>20 Q. Okay.</p> <p>21 A. It's in Northridge.</p> <p>22 Q. And what's your degree in?</p> <p>23 A. Mathematics, liberal studies.</p> <p>24 Q. Okay. So aside from your one year as a sixth 25 grade teacher, I take it that the rest of work</p>	<p>1 A. At a very low level, yes.</p> <p>2 Q. When you say at a low level, does that mean 3 they're not very successful or what does that mean?</p> <p>4 A. Not -- they're just very small.</p> <p>5 Q. Very small. And where are they located?</p> <p>6 A. Irving.</p> <p>7 Q. Okay. Do any -- do you know whether any former 8 employees of Merritt Hawkins work for Arthur Marshall?</p> <p>9 A. I don't know of any.</p> <p>10 Q. Do you know of any former Merritt Hawkins 11 employers who work for Jackson Coker?</p> <p>12 A. I believe Harold Livingston who was one of our 13 marketers and that's all I know.</p> <p>14 Q. Now, do you know of any of your former employers 15 who work for Delta?</p> <p>16 A. I do not.</p> <p>17 Q. What about Fidelus?</p> <p>18 A. I do not.</p> <p>19 Q. Okay. When did Harold Livingston quit Merritt 20 Hawkins?</p> <p>21 A. I want to say probably about six months ago.</p> <p>22 Q. Did Merritt Hawkins institute any litigation 23 against Harold Livingston?</p> <p>24 A. They did.</p> <p>25 Q. What's the status of that?</p>

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<p>1 A. I'm not sure.</p> <p>2 Q. Who would I ask here about the status of that?</p> <p>3 A. Mark Smith or Jim Merritt.</p> <p>4 Q. Who's Mark Smith?</p> <p>5 A. President. Jim Merritt is the founder.</p> <p>6 Q. Jim Merritt is the founder. Now, did either</p> <p>7 Arthur or Marshall ever work for Merritt Hawkins?</p> <p>8 A. Well, yes. You're asking if the owners of Arthur</p> <p>9 Marshall worked for Merritt Hawkins?</p> <p>10 Q. Yes.</p> <p>11 A. They did. One worked for Staff Care and one</p> <p>12 worked for Merritt Hawkins. Curtis Pryor worked for</p> <p>13 Merritt Hawkins. I honestly cannot remember the -- his</p> <p>14 partner.</p> <p>15 Q. So Curtis Pryor. Is there a gentleman named</p> <p>16 Arthur?</p> <p>17 A. No, sir.</p> <p>18 Q. Is there a person named Marshall?</p> <p>19 A. No.</p> <p>20 Q. Okay.</p> <p>21 A. I believe it's their middle names, honestly.</p> <p>22 Q. That's pretty good. Do you know when they</p> <p>23 started Arthur Marshall?</p> <p>24 A. I want to say it's been about 10 -- nine or</p> <p>25 10 years ago.</p>	<p>1 different a level in which we're doing permanent,</p> <p>2 they're doing locums but they also do place physicians</p> <p>3 on a permanent level. A lot of times they have</p> <p>4 opportunities where they have a physician that will work</p> <p>5 temporary and -- and then go permanent.</p> <p>6 Q. Does Staff Care do the same sort of direct mail</p> <p>7 and advertising campaigns that Merritt Hawkins does?</p> <p>8 A. I believe they do.</p> <p>9 Q. Do you -- do you share information with Staff</p> <p>10 Care?</p> <p>11 A. Absolutely not.</p> <p>12 Q. How does that work? Does Staff Care have access</p> <p>13 to the Mhacs database?</p> <p>14 A. No, they do not.</p> <p>15 Q. They have a separate database?</p> <p>16 A. They do.</p> <p>17 Q. Staff Care is located in this building, I take</p> <p>18 it?</p> <p>19 A. Yes.</p> <p>20 Q. Are they physically separated from the folks at</p> <p>21 Merritt Hawkins?</p> <p>22 A. Yes. We serve different floors in -- on</p> <p>23 different sides of the building.</p> <p>24 Q. Is there any prohibition on the sharing of</p> <p>25 information between Staff Care and Merritt Hawkins</p>
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<p>1 Q. Did -- do you know whether Merritt Hawkins</p> <p>2 instituted any -- any lawsuit against them?</p> <p>3 A. I'm not sure.</p> <p>4 Q. Not sure. Okay. What about Jackson or Coker?</p> <p>5 Did they work for Merritt Hawkins?</p> <p>6 A. No, sir.</p> <p>7 Q. They worked for any AMN affiliated entity?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. What about the founders of Delta? Did any of</p> <p>10 them work for any AMN affiliated entity?</p> <p>11 A. So long ago, but I believe if my -- if what I</p> <p>12 know serves to be accurate, but yes, they did work for</p> <p>13 Merritt Hawkins. I'm not sure that all the partners</p> <p>14 did, but there was one or two that did.</p> <p>15 Q. Okay. Do you know if any litigation was</p> <p>16 instituted against those folks?</p> <p>17 A. I'm not sure.</p> <p>18 Q. What about Fidelus?</p> <p>19 A. I'm not sure.</p> <p>20 Q. All right. Do you consider -- do you consider</p> <p>21 the company Staff Care to be a competitor of Merritt</p> <p>22 Hawkins?</p> <p>23 A. At some level, yes.</p> <p>24 Q. At some level. At what level?</p> <p>25 A. We go after essentially similar clients on a</p>	<p>1 employees?</p> <p>2 A. Define prohibition.</p> <p>3 Q. Well, let me ask a different question which I</p> <p>4 think I can get to the same information I'm asking for.</p> <p>5 Do Staff Care and Merritt Hawkins share information</p> <p>6 about physicians?</p> <p>7 A. At times, yes.</p> <p>8 Q. Under what circumstances would they share</p> <p>9 information?</p> <p>10 A. If we've got a candidate or a physician that has</p> <p>11 responded to one of our letters or any communication</p> <p>12 with is only looking for locum tenens, then we will</p> <p>13 share that physician with Staff Care.</p> <p>14 Q. Okay. Does it work the opposite direction?</p> <p>15 A. No.</p> <p>16 Q. Okay. I don't know even know if I understand the</p> <p>17 inference I'm trying to get at. If Staff Care is</p> <p>18 talking to a physician and the physician says, you know</p> <p>19 what, I really want a permanent placement, would they</p> <p>20 then refer that physician over to Merritt Hawkins?</p> <p>21 A. If you're asking if that's the way it should</p> <p>22 work, yes, but they have opportunities to where they</p> <p>23 know clients that have permanent locations, so they will</p> <p>24 place doctors on a -- on a permanent level. In fact,</p> <p>25 it's part of their revenue stream that their quota is</p>

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<p>1 based on is that -- some -- they do have some revenue</p> <p>2 streams that are generated through permanent placement.</p> <p>3 Q. Do you know what percentage of Staff Care's</p> <p>4 business is permanent placement?</p> <p>5 A. I don't.</p> <p>6 Q. Does Merritt Hawkins ever do temporarily</p> <p>7 placements?</p> <p>8 A. Very rarely.</p> <p>9 Q. All right. Is the -- is even the low level of</p> <p>10 competition between Staff Care and Merritt Hawkins a</p> <p>11 source of friction here within AMN?</p> <p>12 A. I would say it's very low, low friction. I mean,</p> <p>13 there's been instances where, you know, we know that</p> <p>14 they've placed a physician permanently that if maybe one</p> <p>15 of our clients that we've been working with permanently</p> <p>16 as well that's created an issue but it's not very</p> <p>17 common.</p> <p>18 Q. Okay. Let's see -- when a -- I take it that the</p> <p>19 marketing consultant at Merritt Hawkins is in charge of</p> <p>20 obtaining the relationship with the facility; is that</p> <p>21 right?</p> <p>22 A. And the recruiters is, yes.</p> <p>23 Q. And the recruiter. Once the marketing -- a</p> <p>24 recruiter is different from a marketing consultant I</p> <p>25 take it?</p>	<p>1 Q. Right.</p> <p>2 A. And you know, the marketer goes out and meets</p> <p>3 them. So there is some variance to that, but there's</p> <p>4 only a few clinic callers that we have.</p> <p>5 Q. All right. And then what is -- how does the</p> <p>6 search consultant fit into that relationship?</p> <p>7 A. The search consultant -- the only time the search</p> <p>8 consultant is through the process of bringing in the</p> <p>9 business. The search consultant only is going out to</p> <p>10 the client once the business is brought in unless</p> <p>11 they've had a relationship with that client and they've</p> <p>12 done a good job with that client and the client says,</p> <p>13 hey, we have additional needs and then the recruiter can</p> <p>14 bring in those -- those needs based upon their</p> <p>15 relationship with that client. We call that repeat</p> <p>16 business.</p> <p>17 Q. All right. I got you. Let's see. How many</p> <p>18 search consultants do you currently have working on the</p> <p>19 Heartland?</p> <p>20 A. Ten.</p> <p>21 Q. How many search consultants did you have working</p> <p>22 for the Heartland in 2013?</p> <p>23 A. Eight.</p> <p>24 Q. And what about 2012?</p> <p>25 A. Between nine and 10, somewhere around there.</p>
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<p>1 A. Yes, recruiters fill the opportunities. The</p> <p>2 marketers are the ones that go out and establish the</p> <p>3 relationship, bring in the search agreement at which</p> <p>4 point in time then the recruiter will go out and profile</p> <p>5 the opportunity and the recruiter will -- will mentor</p> <p>6 that relationship from that period on and the marketer</p> <p>7 will usually follow up maybe monthly to just monitor the</p> <p>8 progress and see how things are going.</p> <p>9 Q. The -- the -- the person at Merritt Hawkins who</p> <p>10 gets the search agreement is the marketing consultant?</p> <p>11 A. Correct.</p> <p>12 Q. And then the performance of the search agreement</p> <p>13 is handled by the recruiter?</p> <p>14 A. That's correct.</p> <p>15 Q. Is the recruiter synonymous with search</p> <p>16 consultant?</p> <p>17 A. No.</p> <p>18 Q. Okay. So how are -- okay. I'm sorry. I'm</p> <p>19 confused now. Is -- I take it there has been three</p> <p>20 people -- or three groups of people who were involved in</p> <p>21 the client relationship, the marketing consultant?</p> <p>22 A. Well, and in some cases to answer your question,</p> <p>23 yes, it's marketing and recruiting and we do have some</p> <p>24 variances where we have clinic callers that will set up</p> <p>25 meetings for the marketer.</p>	<p>1 Q. Are you responsible in any way for the</p> <p>2 identifying of employee candidates for the search</p> <p>3 consultant role?</p> <p>4 A. No.</p> <p>5 Q. Who handles that?</p> <p>6 A. Search consultants.</p> <p>7 Q. I -- I think I'm using the wrong terminology.</p> <p>8 Who goes out and figures out who Merritt Hawkins is</p> <p>9 going to hire to be search consultants?</p> <p>10 A. The client. You're asking who's going to hire</p> <p>11 the --</p> <p>12 Q. No. I'm sorry. Let me stop because I know where</p> <p>13 the confusion is coming from. You had eight people</p> <p>14 working for you as search consultants in the Heartland</p> <p>15 in 2013, right?</p> <p>16 A. (Witness nods head up and down.)</p> <p>17 Q. Who hired those eight people?</p> <p>18 A. Our talent acquisition.</p> <p>19 Q. Talent acquisition.</p> <p>20 A. They are the ones that generally find the</p> <p>21 recruiters or the candidates and then myself and</p> <p>22 generally our senior VP Tom Thornes (phonetic)</p> <p>23 interviews them -- interview the folks.</p> <p>24 Q. Do they do that at job fairs?</p> <p>25 A. There's a lot of different -- through job fairs,</p>

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<p>1 through referrals, through Monster. Honestly, I don't</p> <p>2 know all the tools that they utilize with talent</p> <p>3 acquisition, but there's a lot of different angles.</p> <p>4 Q. Let me back up and ask a few just sort of</p> <p>5 foundational questions. I take it there are other</p> <p>6 geographical regions other than the Heartland?</p> <p>7 A. There is.</p> <p>8 Q. What are they?</p> <p>9 A. West coast, Midwest, upper Midwest, southwest,</p> <p>10 northeast and southeast.</p> <p>11 Q. Is your role and responsibility limited to the</p> <p>12 Heartland?</p> <p>13 A. Yes.</p> <p>14 Q. Are there also directors or VPs who are in charge</p> <p>15 of those other half dozen --</p> <p>16 A. Yes.</p> <p>17 Q. -- geographical regions?</p> <p>18 A. Yes.</p> <p>19 Q. And all of those handled out of this office?</p> <p>20 A. No. We have an office in Atlanta and that's</p> <p>21 where the northeast and southeast are handled.</p> <p>22 Q. Okay. So and -- so west coast, midwest, upper</p> <p>23 midwest and southwest and Heartland are handled here in</p> <p>24 Irving?</p> <p>25 A. That's correct.</p>	<p>1 A. We've hired some recruiters from a competitor,</p> <p>2 but most times we don't. Usually we like to bring them</p> <p>3 in and have them go through our training processes</p> <p>4 versus them having learned possibly a different set of</p> <p>5 protocols than what we go off of.</p> <p>6 Q. Give me a sense of what attributes a successful</p> <p>7 search consultant has at Merritt Hawkins.</p> <p>8 A. Someone who is driven. Someone who can fight</p> <p>9 through the trenches. Someone who can have a bad day</p> <p>10 and able to bounce back. Recruiting is a -- it's a</p> <p>11 roller coaster of a ride. You have a lot of highs. You</p> <p>12 have a lot of lows. A person that is fairly resilient</p> <p>13 and has a good work ethic and drive.</p> <p>14 Q. Is it -- would you consider it to be a sales job?</p> <p>15 A. Yes.</p> <p>16 Q. And is the vast majority of the time spent on the</p> <p>17 telephone?</p> <p>18 A. Yes.</p> <p>19 Q. Is there -- do you have a dials-per-day</p> <p>20 requirement here?</p> <p>21 A. We do.</p> <p>22 Q. What is the dials per day?</p> <p>23 A. Seventy-five to 100 dials.</p> <p>24 Q. And does the company keep track of the number of</p> <p>25 dials?</p>
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<p>1 Q. All right. How many total search consultants are</p> <p>2 employed by Merritt Hawkins across the number of regions</p> <p>3 that we've talked about?</p> <p>4 A. To date I believe there is 75.</p> <p>5 Q. And how many of those are located here in Dallas</p> <p>6 -- Irving, sorry?</p> <p>7 A. I would say probably 55.</p> <p>8 Q. Are you -- well, let me ask this. Do you know</p> <p>9 whether any of the search consultants who are currently</p> <p>10 employed by Merritt Hawkins ever worked for Delta?</p> <p>11 A. I do not believe so.</p> <p>12 Q. Do you know whether any of the search consultants</p> <p>13 who are currently employed by Merritt Hawkins worked for</p> <p>14 Fidelus?</p> <p>15 A. No.</p> <p>16 Q. What about Arthur Marshall?</p> <p>17 A. No.</p> <p>18 Q. What about Jackson Coker?</p> <p>19 A. No.</p> <p>20 Q. What about Staff Care?</p> <p>21 A. No.</p> <p>22 Q. So with respect to all of the search consultants</p> <p>23 -- is -- is -- well, let me -- let me back up. Is it</p> <p>24 the company's policy that they won't hire people who've</p> <p>25 worked for a competitor?</p>	<p>1 A. We do.</p> <p>2 Q. How does it do that?</p> <p>3 A. We have a tracking system. I'm not sure what</p> <p>4 it's called or how it's -- I just get the report every</p> <p>5 morning.</p> <p>6 Q. Identify the number of dials a particular --</p> <p>7 A. Outbound calls, inbound calls, phone time, yes.</p> <p>8 Q. All right. How do you keep track of the</p> <p>9 performance of your search consultants other than by the</p> <p>10 number of dials they make?</p> <p>11 A. How many interviews are being set, how many</p> <p>12 placements they're generating monthly, quarterly. We</p> <p>13 have a set quota in place that, you know, it's a minimum</p> <p>14 of 400 views per month, minimum of one placement per</p> <p>15 month and make sure that, you know, they're having four</p> <p>16 to five presentations per day. Presentation defined as</p> <p>17 them presenting the opportunity to a physician about</p> <p>18 their opportunity.</p> <p>19 Q. Okay. So one placement per month per search</p> <p>20 consultant?</p> <p>21 A. Correct.</p> <p>22 Q. So if you --</p> <p>23 A. That's minimum.</p> <p>24 Q. Minimum. Do you know how many placements the</p> <p>25 Heartland made in 2013?</p>

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<p>1 A. I want to say about 150.</p> <p>2 Q. Do you know how many placements the Heartland</p> <p>3 made in 2012?</p> <p>4 A. I don't.</p> <p>5 Q. There would be a record of that somewhere, I take</p> <p>6 it?</p> <p>7 A. Oh, yes. Yeah.</p> <p>8 Q. Do you know if it was higher or lower than 150?</p> <p>9 A. I don't know. I would imagine it was lower.</p> <p>10 Q. Lower in 2012?</p> <p>11 A. Yes.</p> <p>12 Q. Why would you -- why do you say you imagine that?</p> <p>13 A. Because of the head count.</p> <p>14 Q. Well, you told me in 2012 you had nine to 10</p> <p>15 recruiters.</p> <p>16 A. I said eight in 2012, nine to 10 in 2013, I</p> <p>17 believe.</p> <p>18 Q. Whoops, looks like I wrote it down wrong. So</p> <p>19 more recruiters means, in your mind, likely more</p> <p>20 placements?</p> <p>21 A. Correct.</p> <p>22 Q. All right. And who replaced Scott Gresham?</p> <p>23 A. Well, we didn't have a direct replacement for</p> <p>24 Scott Gresham. I mean, we're -- we hired a couple of</p> <p>25 individuals, but we tend to hire not in the replacement</p>	<p>1 Q. Higher than -- in 2013. Were the profits higher</p> <p>2 or lower in 2013?</p> <p>3 A. Higher.</p> <p>4 Q. Do you know by how much?</p> <p>5 A. We had 29 percent growth in 2013.</p> <p>6 Q. Twenty-nine percent growth. Okay. Let's see.</p> <p>7 Pardon me for a minute. This is going a lot faster than</p> <p>8 I thought which is good for all of us.</p> <p>9 What is the attrition rate for search</p> <p>10 consultants?</p> <p>11 A. Attrition rate for consultants is generally very</p> <p>12 low. Where we see most of the attrition is when they're</p> <p>13 in a RAT status and that's when they're in training.</p> <p>14 Either they have identified that this is not the right</p> <p>15 fit for them early on, or early on we've identified that</p> <p>16 they're not the right fit for the company.</p> <p>17 Q. So by in large most people will washout in the</p> <p>18 training process?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. You told me that you had eight recruiters</p> <p>21 in 2012. Do you -- did you have the same eight</p> <p>22 recruiters in 2013?</p> <p>23 A. No.</p> <p>24 Q. What's the difference?</p> <p>25 A. We had some attrition. We had some new hires and</p>
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<p>1 of someone but hire for growth and we do take into</p> <p>2 account attrition and so it's not really a direct hire</p> <p>3 to replace someone. It's usually just keeping that</p> <p>4 person on the bench. If there is attrition, we're --</p> <p>5 we're already equipped with other recruiters in</p> <p>6 training.</p> <p>7 Q. All right. What's the difference between a</p> <p>8 search consultant and a senior search consultant?</p> <p>9 A. A senior search consultant has reached a certain</p> <p>10 level as far as production goes. It's strictly</p> <p>11 production based to get to a senior search. Seven</p> <p>12 placements in six months to get to search -- I'm sorry,</p> <p>13 senior search and then search is a recruiter in training</p> <p>14 who has hit their first placement and has had eight</p> <p>15 interviews take place rather than transition from</p> <p>16 recruiter in training to search consultant.</p> <p>17 Q. All right. You said that one thing that you</p> <p>18 handle in your role as VP is budgeting; is that right?</p> <p>19 A. Correct.</p> <p>20 Q. Do you keep track also of the revenues that were</p> <p>21 being generated by your group?</p> <p>22 A. I do.</p> <p>23 Q. Do you know whether the revenues in 2013 were</p> <p>24 higher or lower in 2012?</p> <p>25 A. Higher in 2013.</p>	<p>1 we had one individual transfer over from a different</p> <p>2 region.</p> <p>3 Q. Okay. So how many people -- how many of the</p> <p>4 eight search consultants that you had in 2012 did you</p> <p>5 have in 2013?</p> <p>6 A. The same people?</p> <p>7 Q. Yes.</p> <p>8 A. About six.</p> <p>9 Q. Six?</p> <p>10 A. I would think. That's just an estimate.</p> <p>11 Q. Okay. So over the nine or 10 search consultants</p> <p>12 that you had in 2'13 you estimate that six of those had</p> <p>13 been with you in 2012?</p> <p>14 A. Correct.</p> <p>15 Q. Now, what about 2014? How many search</p> <p>16 consultants do you currently have?</p> <p>17 A. Ten.</p> <p>18 Q. Ten. And how many of those were employed by</p> <p>19 Merritt Hawkins in 2013 as search consultants?</p> <p>20 A. All of them.</p> <p>21 Q. All of them. Okay. Thanks. Tell me about the</p> <p>22 -- the training process that you put your recruits</p> <p>23 through.</p> <p>24 A. It's a 20-week program. The first day they start</p> <p>25 they have an on boarding day which is through talent</p>

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<p>1 acquisition and Mike Faye, who's our corporate trainer</p> <p>2 and then they go through a 20-week program in which</p> <p>3 they're taught the systems of Merritt Hawkins, taught</p> <p>4 specialties and physicians and taught, you know, how to</p> <p>5 screen a doctor, how to present a doctor, how to do a</p> <p>6 community profile, how to do an airport interview. It's</p> <p>7 a 20-week program.</p> <p>8 Q. I don't know how to ask this question that will</p> <p>9 make sense, but I think we can get to an answer that</p> <p>10 will. Is it -- I mean, is it like Merritt Hawkins</p> <p>11 University there's a 20-week program, 40 people start</p> <p>12 out on week one and then go along for 20 weeks, or is it</p> <p>13 one by one sort of education program?</p> <p>14 A. No, there's a -- there's a class. Usually the</p> <p>15 classes stagger. Depending on how many hires we have,</p> <p>16 but generally the classes stagger by two weeks. So</p> <p>17 we'll have a starting class on a Monday and then</p> <p>18 essentially two weeks after that we'll have another</p> <p>19 starting class. So they'll have, you know, the same</p> <p>20 people in that class and work through the process.</p> <p>21 Q. Is there a goal for the number of people that you</p> <p>22 have in the class?</p> <p>23 A. No.</p> <p>24 Q. Is it five people, 10 people, 20 people?</p> <p>25 A. It all can depend. I mean, it depends on, you</p>	<p>1 went to work?</p> <p>2 A. Delta.</p> <p>3 Q. Delta. And do you know what the -- what Merritt</p> <p>4 Hawkins is complaining about in that lawsuit?</p> <p>5 A. I don't.</p> <p>6 Q. Who would I ask about that?</p> <p>7 A. Mark Smith.</p> <p>8 Q. Okay. I take it you're not a witness in that</p> <p>9 lawsuit yet?</p> <p>10 A. I am not.</p> <p>11 Q. Okay. Well, that's good. Okay. So my</p> <p>12 understanding is that Gresham, Scott Gresham, had two</p> <p>13 stints at Merritt Hawkins?</p> <p>14 A. That's correct.</p> <p>15 Q. Were you involved in the decision to hire</p> <p>16 Mr. Gresham the first time around?</p> <p>17 A. Yes.</p> <p>18 Q. And what was he hired to?</p> <p>19 A. He was hired as a search consultant.</p> <p>20 Q. And did you participate in the training of</p> <p>21 Mr. Gresham?</p> <p>22 A. I did.</p> <p>23 Q. Did Mr. Gresham have any prior medical staffing</p> <p>24 experience before he came here?</p> <p>25 A. No.</p>
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<p>1 know, where we're at as a company if, you know, if we're</p> <p>2 hiring, not hiring or aggressively hiring. There is a</p> <p>3 lot of different tangibles.</p> <p>4 Q. What's the most -- do you know what the -- the</p> <p>5 highest number of people you've had in the recruiting</p> <p>6 classes?</p> <p>7 A. I don't.</p> <p>8 Q. Same question for the lowest number.</p> <p>9 A. I don't.</p> <p>10 Q. Who would know that, would that be Mike Faye?</p> <p>11 A. Mike Faye.</p> <p>12 Q. Thanks. Let's see. Yesterday during</p> <p>13 Mr. Branam's deposition we talked about a case involving</p> <p>14 a person name Kivelhan.</p> <p>15 A. Yes.</p> <p>16 Q. Who is Kivelhan?</p> <p>17 A. He was a marketer for Merritt Hawkins.</p> <p>18 Q. Did he work in the Heartland?</p> <p>19 A. No. I take that back. There was a period of</p> <p>20 time where, yes, he did and then he transitioned to a</p> <p>21 different region.</p> <p>22 Q. And do you know whether Merritt Hawkins has filed</p> <p>23 a lawsuit against Kivelhan?</p> <p>24 A. I'm aware of it.</p> <p>25 Q. You're aware of it. Do you know where Kivelhan</p>	<p>1 Q. And during his first stint, was he -- after he</p> <p>2 got out of the training process where he was then</p> <p>3 employed by Merritt Hawkins to be a search consultant?</p> <p>4 A. That's correct.</p> <p>5 Q. And he -- I take it he worked in the Heartland?</p> <p>6 A. He did.</p> <p>7 Q. The Heartland doesn't include Texas, I take it?</p> <p>8 A. It does not.</p> <p>9 Q. Is Texas in the southwest region?</p> <p>10 A. Yes, sir.</p> <p>11 Q. All right. And why did he leave Merritt Hawkins</p> <p>12 the first time around?</p> <p>13 A. He left to go work with his father. His father</p> <p>14 owns a tombstone business, I believe down in</p> <p>15 Stephenville, and he left to go work with his father.</p> <p>16 Q. Do you know whether he went to work for Arthur</p> <p>17 Marshall after he left here the first time around?</p> <p>18 A. Do I know if he did?</p> <p>19 Q. Yeah.</p> <p>20 A. Yes, I do.</p> <p>21 Q. Well -- so he went to Arthur Marshall after he --</p> <p>22 after he quit in -- was it 2010?</p> <p>23 A. Yes.</p> <p>24 Q. He went to work for his father for a bit and your</p> <p>25 understanding is he then ended up working for Arthur</p>

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<p>1 Marshall?</p> <p>2 A. That's correct.</p> <p>3 Q. And Arthur Marshall, is that located here in the</p> <p>4 Dallas area?</p> <p>5 A. Irving.</p> <p>6 Q. Irving. So it's within 25 miles of the front</p> <p>7 door of this office?</p> <p>8 A. Correct.</p> <p>9 Q. All right. And do you know what he did for</p> <p>10 Arthur Marshall?</p> <p>11 A. Recruiting.</p> <p>12 Q. Was it a violation of his employment agreement</p> <p>13 for him to go to work for Arthur Marshall?</p> <p>14 A. Not necessarily a violation because he left to go</p> <p>15 work with his father. I don't know what extent the</p> <p>16 violation would've been, but he could've violated his</p> <p>17 noncompete.</p> <p>18 Q. Do you know whether he went to work at Arthur</p> <p>19 Marshall within one year of his separation from Merritt</p> <p>20 Hawkins the first time around?</p> <p>21 A. I'm not sure.</p> <p>22 Q. Did Merritt Hawkins threaten a lawsuit against</p> <p>23 Mr. Gresham or Arthur Marshall?</p> <p>24 A. I don't believe we did, no.</p> <p>25 Q. No lawsuit filed in your understanding?</p>	<p>1 A. Yeah. Some time --</p> <p>2 Q. -- second time around?</p> <p>3 A. Right. Right.</p> <p>4 Q. Did you ask him if he was subject to any</p> <p>5 employment agreement with Arthur Marshall?</p> <p>6 A. I believe I did and being that they are such a</p> <p>7 small organization of I believe probably 10, 12</p> <p>8 employees I don't know that I even did ask him because</p> <p>9 it's not generally common that a company of that size</p> <p>10 even have a -- a noncompete.</p> <p>11 Q. Well, let me -- let me drill down a little bit.</p> <p>12 Do you -- do you recall, sitting here today, whether you</p> <p>13 asked him if he had an employment agreement with Arthur</p> <p>14 Marshall?</p> <p>15 A. I believe I did ask him and I believe he said he</p> <p>16 did not.</p> <p>17 Q. All right. Was there any discussion at this --</p> <p>18 when you talked to him about coming back to Merritt</p> <p>19 Hawkins that there was any concern at Merritt Hawkins</p> <p>20 about his violation of his employment agreement when he</p> <p>21 went to work for Arthur Marshall?</p> <p>22 A. Can you repeat that?</p> <p>23 Q. Well, bad question. Let me start over. Sitting</p> <p>24 here today you don't know whether Mr. Gresham's having</p> <p>25 gone to work for Arthur Marshall violated his employment</p>
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<p>1 A. My understanding, no.</p> <p>2 Q. Is there any exchange of demand letters back and</p> <p>3 forth between the companies?</p> <p>4 A. To my understanding, no, but a lot of times that</p> <p>5 goes -- it's elevated above my -- my role.</p> <p>6 Q. Okay. Who would --</p> <p>7 A. Mark Smith.</p> <p>8 Q. Mark Smith. Okay.</p> <p>9 A. And legal counsel.</p> <p>10 Q. Thank you. Did -- how did it come to pass that</p> <p>11 Mr. Gresham came back to Merritt Hawkins?</p> <p>12 A. He reached out to an employee that was on my team</p> <p>13 and had said that, you know, felt like he had made a</p> <p>14 mistake, felt like he wished he hadn't left having known</p> <p>15 the circumstances with his father and that not working</p> <p>16 out, you know, he missed Merritt Hawkins. He missed</p> <p>17 working for a large, large company versus Arthur</p> <p>18 Marshall and discussed with Billy if there was ever an</p> <p>19 opportunity to come back to -- to Merritt Hawkins.</p> <p>20 Billy had approached me and said, you know, Scott's</p> <p>21 thinking about making a change and loved to come back</p> <p>22 this way. So he and I met.</p> <p>23 Q. Did -- do you remember around about when you met</p> <p>24 with Scott Gresham? Obviously, sometime before he came</p> <p>25 back the --</p>	<p>1 agreement with Merritt Hawkins; is that right?</p> <p>2 MS. NOWAK: Objection to the extent it seeks</p> <p>3 a legal conclusion. You can still answer the question</p> <p>4 to the extent that you're able.</p> <p>5 A. Yeah, to the extent that I am able because he</p> <p>6 left Merritt Hawkins and went to work for his father. I</p> <p>7 honestly don't know if that was a direct violation of</p> <p>8 his noncompete, nor do I know the time frame of when all</p> <p>9 of that occurred.</p> <p>10 Q. (BY MR. VOLNEY) When Mr. Gresham came back to</p> <p>11 Merritt Hawkins for his second stint, did Arthur</p> <p>12 Marshall threaten any litigation against Merritt</p> <p>13 Hawkins?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Again, I'd have to talk to Mark Smith about that?</p> <p>16 A. You would.</p> <p>17 Q. Okay. Good.</p> <p>18 A. It's above my pay grade.</p> <p>19 Q. Hey.</p> <p>20 A. Thank God.</p> <p>21 Q. That's a good point you're making. I think we've</p> <p>22 established that both in his first and second stint at</p> <p>23 Merritt Hawkins, Scott Gresham was responsible for</p> <p>24 search consultant activities in the Heartland, right?</p> <p>25 A. That's correct.</p>

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<p>1 Q. And were you his direct supervisor during both</p> <p>2 stints?</p> <p>3 A. I was.</p> <p>4 Q. Did anyone else supervise him?</p> <p>5 A. No.</p> <p>6 Q. And his -- was there a particular specialty or</p> <p>7 type of facility that he specialized in?</p> <p>8 A. No, sir.</p> <p>9 Q. What kinds of doctors does Merritt Hawkins place</p> <p>10 on a permanent basis?</p> <p>11 A. All specialties. Anywhere from primary care to</p> <p>12 specialists, to some allied being nurse practitioners.</p> <p>13 Q. Pharmacists?</p> <p>14 A. Pharmacists.</p> <p>15 Q. Okay. And I take it that during both stints at</p> <p>16 Merritt Hawkins he was responsible for permanent</p> <p>17 placement of health care providers?</p> <p>18 A. That's correct.</p> <p>19 Q. And did he ever do any temporary placements?</p> <p>20 A. No, sir.</p> <p>21 Q. Does anybody -- does anybody move over from Staff</p> <p>22 Care to become a search consultant for Merritt Hawkins?</p> <p>23 A. No.</p> <p>24 Q. Does anybody from Merritt Hawkins ever move over</p> <p>25 to Staff Care to do whatever they do?</p>	<p>1 A. I was.</p> <p>2 Q. Why did you terminate him?</p> <p>3 A. For his production, lack of.</p> <p>4 Q. And I take it, he, like Scott Gresham was -- his</p> <p>5 region was the Heartland?</p> <p>6 A. Yes.</p> <p>7 Q. And his job was permanent placement of</p> <p>8 physicians?</p> <p>9 A. Yes.</p> <p>10 Q. Are you generally familiar with the terms of</p> <p>11 Merritt Hawkins' employment agreements?</p> <p>12 A. Yes, to a certain level.</p> <p>13 Q. Do you sign off on those employment agreements</p> <p>14 with each of the new hires?</p> <p>15 A. I do not.</p> <p>16 Q. Who does that?</p> <p>17 A. That would be I believe talent acquisition, and</p> <p>18 then Mark Smith, I believe has the last -- last</p> <p>19 signature.</p> <p>20 Q. Are you -- do you know what -- well, are you ever</p> <p>21 present when these employment agreements are signed off</p> <p>22 on --</p> <p>23 A. No.</p> <p>24 Q. -- by the new employees?</p> <p>25 A. My responsibility is to interview them along with</p>
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<p>1 A. We've a couple of instances. It's very rare.</p> <p>2 Q. Any recent instances?</p> <p>3 A. No.</p> <p>4 Q. Well, let's talk about Billy Bowden for a little</p> <p>5 bit. Do you recall how long he worked for Merritt</p> <p>6 Hawkins?</p> <p>7 A. It was roughly two years.</p> <p>8 Q. Was he part of the same recruiting class that</p> <p>9 Scott Gresham was a part of?</p> <p>10 A. No.</p> <p>11 Q. Was he hired before or after Scott?</p> <p>12 A. I believe he was hired before Scott if my memory</p> <p>13 serves correctly.</p> <p>14 Q. And was Billy Bowden a search consultant?</p> <p>15 A. He was.</p> <p>16 Q. And -- okay. Do you know where Billy Bowden went</p> <p>17 after he left Staff Care?</p> <p>18 A. He went into the mortgage industry where he --</p> <p>19 Q. I said Staff Care. I meant Merritt Hawkins,</p> <p>20 sorry.</p> <p>21 A. Yeah, Merritt Hawkins. He was in the mortgage</p> <p>22 industry. We hired him from the mortgage industry. He</p> <p>23 was terminated and then went back into the mortgage</p> <p>24 industry.</p> <p>25 Q. And I -- were you the person who terminated him?</p>	<p>1 the senior vice president Tom Florence (phonetic).</p> <p>2 Together we'll make the decision of whether or not we</p> <p>3 want to hire that individual and then from there the</p> <p>4 talent acquisition department will forward the agreement</p> <p>5 to that candidate and I don't get involved in any of</p> <p>6 that.</p> <p>7 Q. All right. So what --</p> <p>8 MS. NOWAK: John, before we get going into</p> <p>9 the employment agreements, we've been going for about an</p> <p>10 hour. Do you want to take just a five- or 10-minute</p> <p>11 body break?</p> <p>12 MR. VOLNEY: Sure. Yeah, that's fine.</p> <p>13 Let's go off the record.</p> <p>14 THE VIDEOGRAPHER: Off the record at 10:52</p> <p>15 a.m.</p> <p>16 (Break taken from 10:52 a.m. to 11:10 a.m.)</p> <p>17 THE VIDEOGRAPHER: We're back on the record</p> <p>18 at 11:10 a.m.</p> <p>19 Q. (BY MR. VOLNEY) Okay. Let's talk a little bit</p> <p>20 more about Scott Gresham. Was Scott Gresham while he</p> <p>21 was in the Heartland Group your best consultant?</p> <p>22 A. Not my best, but a productive one, yes.</p> <p>23 Q. Do you know how many placements Scott made in</p> <p>24 2012 up until the time he quit?</p> <p>25 A. I mean, he was on pace to -- he was steady at one</p>

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<p>1 to two placements a month. I'm not sure what the exact</p> <p>2 total was, but again, he was -- he was good for one- or</p> <p>3 two-a-month placements.</p> <p>4 Q. You consider him one of your better employees,</p> <p>5 then?</p> <p>6 A. I would, yes.</p> <p>7 Q. How did you -- how did you learn that Scott had</p> <p>8 decided to terminate his employment with Merritt</p> <p>9 Hawkins?</p> <p>10 A. Through an e-mail.</p> <p>11 Q. Here. I guess we can -- I can show you that.</p> <p>12 Let's see. Just to make things easier, what I'm going</p> <p>13 to do is I'm going to mark as 106.</p> <p>14 THE REPORTER: We already have a 106.</p> <p>15 MR. VOLNEY: Well, I'm not going to mark it</p> <p>16 as 106. Must be 107.</p> <p>17 THE REPORTER: Yeah.</p> <p>18 MR. VOLNEY: Okay. What I marked as Exhibit</p> <p>19 107 a copy of the complaint filed by your employer</p> <p>20 against Scott and Billy.</p> <p>21 (Exhibit Number 107 marked.)</p> <p>22 Q. (BY MR. VOLNEY) Let me ask you a few sort of</p> <p>23 background questions and then we'll talk about -- we'll</p> <p>24 get to the e-mail that Scott sent you which I think is</p> <p>25 attached there at the back of that complaint. Have you</p>	<p>1 Q. What is your understanding of what Consilium does</p> <p>2 for business?</p> <p>3 A. They do temporary and permanent staffing.</p> <p>4 Q. What is your -- the basis for your statement that</p> <p>5 they do permanent staffing?</p> <p>6 A. What is the basis of my statement?</p> <p>7 Q. Yeah, how do you know they do permanent staffing,</p> <p>8 in other words?</p> <p>9 A. Because, it -- one, I believe it even says it on</p> <p>10 their -- their web site, if you were to look at their</p> <p>11 web site. And I know that from speaking with physicians</p> <p>12 who've worked with Consilium that they present</p> <p>13 opportunities that are on a permanent level. And I</p> <p>14 haven't been on their web site in some time, but I</p> <p>15 believe again, if you go to their web site, they will</p> <p>16 even list permanent opportunities.</p> <p>17 Q. Your testimony sitting here today is that</p> <p>18 Consilium lists on its web site permanent opportunities</p> <p>19 for physicians?</p> <p>20 A. I am not saying that for certain, but I do recall</p> <p>21 that there has been positions listed that maybe it's</p> <p>22 temp to perm or -- or regardless it's still mentioning</p> <p>23 the placement of permanent level.</p> <p>24 Q. Okay. What physicians did you talk to that told</p> <p>25 you Consilium does permanent placement?</p>
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<p>1 seen this document before?</p> <p>2 A. No.</p> <p>3 Q. What did you do to get ready for today's</p> <p>4 deposition?</p> <p>5 A. Just had a couple of conversations and -- and</p> <p>6 looked at a couple of documents but nothing aside from</p> <p>7 this.</p> <p>8 Q. Do you know what documents you looked at?</p> <p>9 A. I don't, no.</p> <p>10 Q. Was that this morning?</p> <p>11 A. For a little bit this morning and a little bit</p> <p>12 yesterday.</p> <p>13 Q. Sitting here today you don't recall what</p> <p>14 documents you looked at, though?</p> <p>15 A. It was just -- no, I don't.</p> <p>16 Q. Was it the employment agreement?</p> <p>17 A. No.</p> <p>18 Q. All right. Never seen this before I take it. Do</p> <p>19 you know why Merritt Hawkins is suing Scott Gresham, or</p> <p>20 what's your understanding of why Merritt Hawkins is</p> <p>21 suing Scott Gresham?</p> <p>22 A. Because he violated his noncompete.</p> <p>23 Q. By going to work for Consilium?</p> <p>24 A. By going to work for a competitor, Consilium,</p> <p>25 yes.</p>	<p>1 A. I don't recall.</p> <p>2 Q. When did you talk to these physicians?</p> <p>3 A. I mean, it could've been a year or so ago, but I</p> <p>4 mean, there's been discussions of working -- a physician</p> <p>5 who is working with us oftentimes we'll ask the question</p> <p>6 of you know, are you working with anyone else. Have you</p> <p>7 heard of any other opportunities just to get a gauge as</p> <p>8 far as their interest level in this position versus</p> <p>9 other positions that they may be inquiring about and</p> <p>10 there's been instances where they've said, yeah, we're</p> <p>11 working with Consilium or another one of our</p> <p>12 competitors.</p> <p>13 Q. Does Merritt Hawkins encourage physicians to work</p> <p>14 with different staffing companies?</p> <p>15 A. Do we encourage it?</p> <p>16 Q. Right.</p> <p>17 A. No.</p> <p>18 Q. Because that's not in the book, the Merritt</p> <p>19 Hawkins book?</p> <p>20 A. Well, we don't encourage physicians to work with</p> <p>21 other companies because ultimately our goal is for them</p> <p>22 to work with us and us place them.</p> <p>23 Q. So have you read that Merritt Hawkins Guide to</p> <p>24 Physician Recruiting?</p> <p>25 A. I have.</p>

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<p>1 Q. So your testimony is nowhere in that book does it</p> <p>2 encourage a physician to talk to a number of different</p> <p>3 recruiting companies?</p> <p>4 MS. NOWAK: Objection; argumentative.</p> <p>5 A. I'm not sure that it mentions it in the handbook.</p> <p>6 Q. (BY MR. VOLNEY) Is -- do you consider the</p> <p>7 information that's contained in that handbook to be</p> <p>8 confidential information of Merritt Hawkins?</p> <p>9 A. I do.</p> <p>10 Q. And just to be clear, I'm talking about Merritt</p> <p>11 Hawkins Guide to Physician Recruiting?</p> <p>12 A. Oh, the guide to physician recruiting?</p> <p>13 Q. Right.</p> <p>14 A. Okay. I'm -- my understanding is the employee</p> <p>15 handbook, but as far as the guide to physician</p> <p>16 recruiting, I do not find that to be proprietary. I</p> <p>17 mean, that's something that we give out to clients and</p> <p>18 -- for their resources.</p> <p>19 Q. Okay. Can you tell me the names of any</p> <p>20 physicians who Merritt Hawkins has lost to Consilium?</p> <p>21 A. Any physicians that we have lost?</p> <p>22 Q. Right.</p> <p>23 A. I'm not sure.</p> <p>24 Q. How would I go about determining that?</p> <p>25 A. I don't know that there's a way to determine what</p>	<p>1 A. I have seen the reports to how many files were</p> <p>2 deleted or?</p> <p>3 Q. What reports have you seen is probably a better</p> <p>4 question.</p> <p>5 A. I have not seen any as far as reports that showed</p> <p>6 all of the deletions.</p> <p>7 Q. Well, what files were deleted?</p> <p>8 A. I mean, I think there was personal files. There</p> <p>9 was files that had MHA information. Information that is</p> <p>10 -- would be considered proprietary and -- and extremely</p> <p>11 high volume of -- of deletions from his -- from his</p> <p>12 computer that typically we would not -- we would not</p> <p>13 see.</p> <p>14 Q. I just want to understand. I take it you,</p> <p>15 yourself, did not look at Mr. Gresham's hard drive,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. You did not conduct any independent investigation</p> <p>19 as to the files that might have been deleted from that</p> <p>20 hard drive, correct?</p> <p>21 A. I know of some files that were deleted from his</p> <p>22 hard drive, yes.</p> <p>23 Q. Okay. What files and how do you know that they</p> <p>24 were deleted?</p> <p>25 A. Well, I saw some of the -- the files that were</p>
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<p>1 physicians we've worked with that we've lost to</p> <p>2 Consilium.</p> <p>3 Q. Besides violating his noncompete, is there any --</p> <p>4 do you have any other understanding of why Merritt</p> <p>5 Hawkins has sued Scott Gresham?</p> <p>6 A. Yes.</p> <p>7 Q. What else?</p> <p>8 A. For downloading and deleting information that's</p> <p>9 related to his --- his work and related to MHA</p> <p>10 ownership.</p> <p>11 Q. What is your understanding based on? Do you have</p> <p>12 personal knowledge of that?</p> <p>13 A. I do. I mean, personal knowledge in the fact</p> <p>14 that I know there's been hundreds of records that have</p> <p>15 been either deleted or shared from his computer.</p> <p>16 Q. Is that based on your personal investigation?</p> <p>17 A. No. It's based on the investigation early on</p> <p>18 when they inquired his desktop and started going through</p> <p>19 what -- what information and how much information was</p> <p>20 deleted. I was not involved in the overall</p> <p>21 investigation but...</p> <p>22 Q. Who was involved in the investigation?</p> <p>23 A. That I don't know, but the IT department. I</p> <p>24 don't know to what level.</p> <p>25 Q. Have you seen any reports of that investigation?</p>	<p>1 deleted when I was working with IT and they're inquiring</p> <p>2 about certain -- certain information that was deleted</p> <p>3 from his computer.</p> <p>4 Q. Who did you work with in IT?</p> <p>5 A. I don't recall the person's name. Multiple</p> <p>6 people that were down in the -- the IT department at</p> <p>7 that time.</p> <p>8 Q. Did you see the actual file or just the name of</p> <p>9 the file?</p> <p>10 A. The name of the file.</p> <p>11 Q. And what was your involvement in that</p> <p>12 investigation?</p> <p>13 A. Well, early on my involvement was finding out</p> <p>14 what -- how much volume was -- was deleted. We quickly</p> <p>15 acquired his desktop. So that way they could go and</p> <p>16 manually see what was deleted and then what could be</p> <p>17 retrieved as far as deleted items.</p> <p>18 Q. When did -- well, I take it that you know that</p> <p>19 Mr. Gresham's workstation at Merritt Hawkins was</p> <p>20 actually redeployed to a -- a different Merritt Hawkins</p> <p>21 employee for a period of time?</p> <p>22 A. I was unaware of that.</p> <p>23 Q. All right. When did you learn that, or how did</p> <p>24 you learn -- well, let me ask a different question.</p> <p>25 When did you first suspect that Mr. Gresham had gone to</p>

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<p>1 work for a competitor?</p> <p>2 A. That was when Breanna Elliott had a conversation</p> <p>3 with Tom Florence suggesting that she had spoken with</p> <p>4 Scott and that he had been contacted by Billy Bowden</p> <p>5 about an opportunity with Consilium.</p> <p>6 Q. Do you know who made that initial contact between</p> <p>7 Scott and Billy?</p> <p>8 A. I don't know. I don't know if Billy contacted</p> <p>9 Scott or Scott contacted Billy, I'm not sure.</p> <p>10 Q. And when you learned this information, did you</p> <p>11 learn it from Mr. Florence?</p> <p>12 A. I did.</p> <p>13 Q. And what did you do once you learned that</p> <p>14 information?</p> <p>15 A. I'm not sure exactly what I did. And I think we</p> <p>16 may have looked into it a little bit further to see if</p> <p>17 in fact that allocation was accurate at which point we</p> <p>18 did identify that it was accurate that Scott was working</p> <p>19 there. I may have gone on his LinkedIn page to see if</p> <p>20 he had updated his new employment status.</p> <p>21 Q. Do any other former Merritt Hawkins folks work at</p> <p>22 Consilium?</p> <p>23 A. Aside from Billy Bowden?</p> <p>24 Q. Right.</p> <p>25 A. None that I'm aware of.</p>	<p>1 Q. And you don't really expect them to tell you</p> <p>2 that, do you?</p> <p>3 A. Correct.</p> <p>4 Q. All right. I want to talk a little bit about the</p> <p>5 -- the computer files here at Merritt Hawkins. Does an</p> <p>6 employee's workstation backup to a network drive here at</p> <p>7 Merritt Hawkins?</p> <p>8 A. From my understanding, yes, it does.</p> <p>9 Q. And so whenever you in your employment at Merritt</p> <p>10 Hawkins saves something to the my documents folder on</p> <p>11 your desktop, that's actually backed up to a network</p> <p>12 drive, isn't it or saved on a network drive?</p> <p>13 A. From my understanding, yes.</p> <p>14 Q. And whenever you save something to your my</p> <p>15 documents file, you understand that it is actually</p> <p>16 resident on a different server within the four corners</p> <p>17 of this building, right?</p> <p>18 A. Correct.</p> <p>19 Q. And do you -- is that disclosed to your</p> <p>20 employees?</p> <p>21 A. It is. We have a -- I don't know if it's called</p> <p>22 the employee handbook but, yes, there's literature that</p> <p>23 mentions what we can and can't do as far as saving</p> <p>24 utilizations of USBs and CDs, and kind of the dos and</p> <p>25 don't through our policies and procedures as it relates</p>
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<p>1 Q. Do you know whether any people while employed by</p> <p>2 Merritt Hawkins have interviewed with Consilium?</p> <p>3 A. None that I'm aware of.</p> <p>4 Q. What -- do your employees ever interview for new</p> <p>5 jobs while they're employed for you?</p> <p>6 A. Yes.</p> <p>7 Q. Do they typically tell you who they're</p> <p>8 interviewing with?</p> <p>9 A. Not if they want to be continued employed here.</p> <p>10 Q. If somebody comes to you and tells you that</p> <p>11 they're interviewing for a new job you would -- your</p> <p>12 reaction would be to terminate them, I take it?</p> <p>13 A. Yeah. If not termination then definitely warrant</p> <p>14 a very strict conversation, but, yes.</p> <p>15 Q. And when you say strict conversation, strict in</p> <p>16 what way? What would you tell them?</p> <p>17 A. Probably be something to where we would either</p> <p>18 put them on final as far as our corrective action plan</p> <p>19 goes or otherwise, yes, we would terminate them.</p> <p>20 Q. How many people have you terminated when they've</p> <p>21 told you that they're interviewing for new jobs?</p> <p>22 A. I have not.</p> <p>23 Q. Because typically your employees don't tell you</p> <p>24 when they're interviewing for new jobs, right?</p> <p>25 A. Correct.</p>	<p>1 to IT.</p> <p>2 Q. I'm going to show you what we looked at</p> <p>3 yesterday, Exhibit 105, with Mr. Branam. If you'll look</p> <p>4 at the next-to-last bullet point.</p> <p>5 A. Under please do or please do not?</p> <p>6 Q. The one that says note. Would you read that to</p> <p>7 me?</p> <p>8 A. I'm sorry. Oh, the very bottom?</p> <p>9 Q. Right, next to last.</p> <p>10 A. Note: Your my documents folder points to a</p> <p>11 network drive. It does not live on your computer's hard</p> <p>12 drive.</p> <p>13 Q. All right. And that's -- is that one of the</p> <p>14 policies that you're referring to that tells your</p> <p>15 employees that their my documents folder lives on the</p> <p>16 network drive?</p> <p>17 A. Having not read through this whole document in a</p> <p>18 very long period of time I'd have to probably go and</p> <p>19 look through that further but...</p> <p>20 Q. Certainly is your understanding as a vice</p> <p>21 president in charge of the Heartland at Merritt Hawkins,</p> <p>22 right?</p> <p>23 A. Correct.</p> <p>24 Q. Do you know how many documents Mr. Gresham kept</p> <p>25 on his desktop versus in his my documents folder?</p>

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<p>1 A. I do not know.</p> <p>2 Q. Do you know why Mr. Gresham computer wasn't</p> <p>3 backing up -- or let me use the words of this policy.</p> <p>4 Do you know why Mr. Gresham's my documents folder was</p> <p>5 not pointed to a network drive?</p> <p>6 A. I'm not sure.</p> <p>7 Q. Do you know why certain documents in</p> <p>8 Mr. Gresham's my documents folder were pointed to a</p> <p>9 network drive, but your expert says others weren't?</p> <p>10 A. Again, I'm not sure.</p> <p>11 Q. I take it you're not a computer person?</p> <p>12 A. I'm not in IT. I know how to -- the basics.</p> <p>13 Q. What's the company's policy with respect to USB</p> <p>14 drives?</p> <p>15 A. They're not allowed.</p> <p>16 Q. If you find an employee flashing around a USB</p> <p>17 drive on the floor, what do you do?</p> <p>18 A. We would quickly discuss that with the employee</p> <p>19 that those are not -- is not allowed and they would have</p> <p>20 to -- they'd have to put it away or otherwise we would</p> <p>21 confiscate it. I honestly have not been in a situation</p> <p>22 to where we've seen something of that nature, but at my</p> <p>23 level if I saw it, I would tell them that they would</p> <p>24 have to put it away and then I would report that to my</p> <p>25 senior level vice president Tom Florence and we would</p>	<p>1 A. I'm not 100 percent sure if it did or did not.</p> <p>2 Q. Was it supposed to work?</p> <p>3 A. Should not have worked, no.</p> <p>4 Q. Who would've been responsible at Merritt Hawkins</p> <p>5 for making sure that the USB port on Mr. Gresham's</p> <p>6 computer did not work?</p> <p>7 A. That would be IT level situation.</p> <p>8 Q. How did Mr. Gresham copy documents from his</p> <p>9 computer?</p> <p>10 A. How did he copy them? Well, I know to the best</p> <p>11 of my knowledge is that he forwarded a good amount of</p> <p>12 documentation to his home e-mail address.</p> <p>13 Q. All right.</p> <p>14 A. So that would be how -- how he essentially he</p> <p>15 copied that information by the forwarding of information</p> <p>16 to his home -- home e-mail address.</p> <p>17 Q. Do you know any other type of copying that</p> <p>18 Mr. Gresham did?</p> <p>19 A. I'm not aware of any.</p> <p>20 Q. Let's look back at 105. Do you -- where in that</p> <p>21 policy does it state that Merritt Hawkins employees may</p> <p>22 not forward Merritt Hawkins related information to their</p> <p>23 personal e-mail account?</p> <p>24 A. Under please do not.</p> <p>25 Q. Okay.</p>
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<p>1 probably escalate it from there.</p> <p>2 Q. Have you ever terminated employment -- have you</p> <p>3 ever terminated an employee for having a USB drive in</p> <p>4 his or her position while on Merritt Hawkins premises?</p> <p>5 A. Have I personally, no.</p> <p>6 Q. Has the company to your knowledge?</p> <p>7 A. I am not -- to my knowledge, no.</p> <p>8 Q. Tell me this. Do the USB ports on Merritt</p> <p>9 Hawkins workstation, are they functional?</p> <p>10 A. At a certain level, how I understand it, they are</p> <p>11 functional in upper leadership. Lower levels my</p> <p>12 understanding is they're not operable.</p> <p>13 Q. We're talking about levels, you're talking about</p> <p>14 sort of hierarchy within the company?</p> <p>15 A. That's correct.</p> <p>16 Q. So a guy like Mark Smith his USB port might work?</p> <p>17 A. I would imagine it does.</p> <p>18 Q. Does your USB port work on your --</p> <p>19 A. It does, yes.</p> <p>20 Q. It does. Okay.</p> <p>21 A. I don't know that to be true for sure because</p> <p>22 I've never used it, but how I understand it, yes, it</p> <p>23 does.</p> <p>24 Q. Was the USB port on Mr. Gresham's computer</p> <p>25 functional? Did it work?</p>	<p>1 A. Do not transfer from or store outside the network</p> <p>2 any company files or data except for temporary use to</p> <p>3 perform authorized work prohibited. Storage devices</p> <p>4 include: Laptops, hard drives, removable drives, CDs,</p> <p>5 DVDs, USB ports, et cetera. Do not abuse e-mails. Do</p> <p>6 not send e-mails relating to personal business ventures</p> <p>7 or promoting personal views or beliefs, do not send or</p> <p>8 forward large e-mails. A large e-mail contains single</p> <p>9 or multiple attachments that total five megabytes or</p> <p>10 more. Do not use e-mail to transmit obscene, offensive</p> <p>11 or pornographic materials.</p> <p>12 Q. Do you know whether any of your employees may</p> <p>13 occasionally forward information to their personal</p> <p>14 accounts so they may work on company business after</p> <p>15 hours?</p> <p>16 A. That does not happen.</p> <p>17 Q. Doesn't happen at all?</p> <p>18 A. That we send to our personal e-mail --</p> <p>19 Q. Right.</p> <p>20 A. -- documents?</p> <p>21 Q. Uh-huh.</p> <p>22 A. That's incredibly rare.</p> <p>23 Q. Okay.</p> <p>24 A. The reason why I say that is because we have a</p> <p>25 secured network through VPN that we can access all that</p>

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<p>1 information and, you know, when it comes to most</p> <p>2 materials that we would bring on a profile or otherwise</p> <p>3 an airport interview really kind of the two areas that</p> <p>4 we would leave the office and travel, most of our</p> <p>5 documents are a hard copy in which we can take notes and</p> <p>6 -- and provide information to clients.</p> <p>7 Q. All right.</p> <p>8 THE WITNESS: I don't know if this is a good</p> <p>9 seat to be in.</p> <p>10 MR. VOLNEY: It's the best one in the house.</p> <p>11 Q. (BY MR. VOLNEY) All right. Does -- does the</p> <p>12 company ever take steps to review its employees' use of</p> <p>13 their e-mail account to determine if they're forwarding</p> <p>14 information that they shouldn't be forwarding to</p> <p>15 personal e-mail accounts?</p> <p>16 A. Does the company utilize steps?</p> <p>17 Q. Right.</p> <p>18 A. To the best of my knowledge I believe they do.</p> <p>19 Especially when it's a high volume. I mean, if it's one</p> <p>20 or two e-mails or something of that nature, I don't</p> <p>21 think it presents a red flag, but when you're talking</p> <p>22 about multiple up to the hundreds of e-mails or</p> <p>23 deletions, then yes, that's definitely going to create a</p> <p>24 red flag and it will be investigated.</p> <p>25 Q. Is it your understanding that Mr. Gresham</p>	<p>1 copies of all the documents that Mr. Gresham sent from</p> <p>2 his personal e-mail -- from his work e-mail account to</p> <p>3 his company e-mail account -- sorry. Let me back up.</p> <p>4 I'm going to restate that so it's clear. I've asked</p> <p>5 your company to produce to me copies of all of the</p> <p>6 e-mails that they say Gresham sent from his work e-mail</p> <p>7 account to his personal e-mail account, okay. So I have</p> <p>8 some copies of those documents. There's not that many</p> <p>9 of them. I want to talk to you about them, okay.</p> <p>10 A. Okay.</p> <p>11 Q. So let's spend some time looking at them.</p> <p>12 (Exhibit Number 108 marked.)</p> <p>13 Q. (BY MR. VOLNEY) So let's look at what I've</p> <p>14 marked as Exhibit 108. What is Exhibit 108?</p> <p>15 A. This is a authorization for a -- for a sourcing</p> <p>16 campaign that identifies the cost and expense of what</p> <p>17 we're going to do for advertisement and for the client</p> <p>18 to authorize for approval.</p> <p>19 Q. Okay. Did Mr. Gresham do any work for Missouri</p> <p>20 Eye Institute?</p> <p>21 A. He did, yes.</p> <p>22 Q. Okay. What work did he do for Missouri Eye</p> <p>23 Institute?</p> <p>24 A. He recruited for a retina surgery search.</p> <p>25 Q. Did he make that placement?</p>
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<p>1 forwarded to himself hundreds of documents?</p> <p>2 A. Quite a few, yeah. I believe it was in the</p> <p>3 hundred range, absolutely.</p> <p>4 Q. Okay. And you're talking about attaching a</p> <p>5 document to ScottGresham@MHA.com and then forwarding</p> <p>6 that document to whatever his personal e-mail account</p> <p>7 is?</p> <p>8 A. Yeah. I mean, it was in combination of deletions</p> <p>9 and e-mails, yeah, I believe it was in the hundreds</p> <p>10 range.</p> <p>11 Q. Have you read Mr. Gresham's deposition?</p> <p>12 A. I have not.</p> <p>13 Q. Were you involved in -- well, any e-mail that</p> <p>14 Mr. Gresham forwarded from his work e-mail account to</p> <p>15 his personal e-mail account, wouldn't your company have</p> <p>16 a copy of that?</p> <p>17 A. Would they have a copy of the e-mails that were</p> <p>18 sent from his computer to his home computer?</p> <p>19 Q. Yes.</p> <p>20 A. I believe they would. I believe they can -- I</p> <p>21 mean, I know a lot of it was deleted, but I believe you</p> <p>22 can go back and retrieve and I believe there was</p> <p>23 retrieval of a certain portion of those. I don't</p> <p>24 believe we were able to retrieve all of them.</p> <p>25 Q. Well, I've asked your company to provide me</p>	<p>1 A. He did not.</p> <p>2 Q. He did not. Do you know if Merritt Hawkins lost</p> <p>3 this business to Consilium?</p> <p>4 A. I'm not aware of that.</p> <p>5 Q. You can certainly call up Missouri Eye Institute</p> <p>6 and ask them, right?</p> <p>7 A. We could. I highly doubt -- yeah, we could.</p> <p>8 Q. You highly doubt what?</p> <p>9 A. That's just not a common practice for us to call</p> <p>10 up a client and ask if they're working with another</p> <p>11 company, and, I don't know, I guess I highly doubt that</p> <p>12 that client would just want to volunteer that</p> <p>13 information.</p> <p>14 Q. Is the -- is the form that's the second page here</p> <p>15 marked MHA104, is this form confidential?</p> <p>16 A. Yeah. I would see it as confidential, yes.</p> <p>17 Q. This -- this -- the information on the form or</p> <p>18 the form itself?</p> <p>19 A. The information on the form. We don't -- it's</p> <p>20 not something that we want competitors to see what we're</p> <p>21 charging per price point for each piece. Yeah, I would</p> <p>22 definitely see this as confidential to us and as well to</p> <p>23 the client.</p> <p>24 Q. How many of these client authorization for</p> <p>25 personal letter campaign and Internet advertisements</p>

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<p>1 does your group send out on a weekly basis?</p> <p>2 A. These are not sent out. These are handled in</p> <p>3 person. So this would be something to when we go out</p> <p>4 and execute a non-site profile with the client. We</p> <p>5 bring this information with us and a hardcopy for them</p> <p>6 to sign and authorize the campaign and this is an</p> <p>7 out-of-pocket expense to the client. We typically do</p> <p>8 not send this as an e-mail to our clients. This is</p> <p>9 something we bring in as a hard copy when we're out on</p> <p>10 the profile.</p> <p>11 Q. Okay. So how many of these hardcopies are</p> <p>12 presented on a weekly basis to clients?</p> <p>13 A. That can vary. It's all depending on how many</p> <p>14 searches have been brought in on the marketing side to</p> <p>15 how many profiles we have set up. I think if you were</p> <p>16 to say averages we have probably about 10 to 12</p> <p>17 sometimes upwards to 15 profiles a month.</p> <p>18 Q. All right. And the date on this is July 20th,</p> <p>19 2012; do you see that?</p> <p>20 A. I see July 23rd, 2012.</p> <p>21 Q. Oh, on the second page of Exhibit 108. When did</p> <p>22 Mr. Gresham quit?</p> <p>23 A. Mr. Gresham quit on September 24th, 2012.</p> <p>24 Q. Is this one of the documents that your -- your</p> <p>25 company is claiming that Mr. Gresham stole when he left</p>	<p>1 Q. As part of your search agreement with a company</p> <p>2 like Missouri Eye Institute, is there a confidentiality</p> <p>3 clause in there?</p> <p>4 A. What do you mean by that?</p> <p>5 Q. I mean, is there any -- any -- you're familiar</p> <p>6 with the terms of the search agreement, I take it?</p> <p>7 A. Yes.</p> <p>8 Q. Is there any provision in that agreement that</p> <p>9 requires that the client requires to keep Merritt</p> <p>10 Hawkins pricing confidential?</p> <p>11 A. No.</p> <p>12 Q. Okay. Is there any -- is there any</p> <p>13 confidentiality agreement on the client, to your</p> <p>14 knowledge?</p> <p>15 A. I'm not sure honestly.</p> <p>16 Q. Who would we ask?</p> <p>17 A. Probably could ask Travis Singleton our marketer.</p> <p>18 Q. Okay. And is that a standard document, the</p> <p>19 search agreement?</p> <p>20 A. Yes.</p> <p>21 Q. In other words, it's not -- some of the terms,</p> <p>22 price might be negotiated --</p> <p>23 A. Yes.</p> <p>24 Q. -- but the language is standard?</p> <p>25 A. And I deal very little with search agreements.</p>
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<p>1 Merritt Hawkins?</p> <p>2 MS. NOWAK: Objection to extent that it</p> <p>3 calls for a legal conclusion and/or speculation.</p> <p>4 A. I'm not sure.</p> <p>5 Q. (BY MR. VOLNEY) Okay. Is the form that's</p> <p>6 attached to Exhibit 108, is that published anywhere on</p> <p>7 Merritt Hawkins web site?</p> <p>8 A. On our web site?</p> <p>9 Q. Yep.</p> <p>10 A. No.</p> <p>11 Q. I note when I look at this particular client</p> <p>12 authorization here on the second page of 108 that</p> <p>13 there's no instruction to the client that the document</p> <p>14 be kept confidential, is there?</p> <p>15 A. I don't know. At the bottom it says</p> <p>16 confidential, attorneys' eyes only.</p> <p>17 Q. Okay. Well, I'll represent to you that that was</p> <p>18 a -- that's a legend that she put on it. She meaning</p> <p>19 Christine Nowak.</p> <p>20 A. I did not see that anywhere on here, but again, I</p> <p>21 would think it's confidential for the fact that we as a</p> <p>22 company don't want others to know what we are charging</p> <p>23 per price piece for our sourcing nor would the client</p> <p>24 want to know what they're being charged or paid for the</p> <p>25 source.</p>	<p>1 That's more of a marketing.</p> <p>2 (Exhibit Number 109 marked.)</p> <p>3 Q. (BY MR. VOLNEY) Okay. That's fair. Let's look</p> <p>4 at 109. This looks like it was sent out at the same</p> <p>5 time as Exhibit 108, July 20th, 2012. Was this the time</p> <p>6 period that Mr. Gresham was working with Missouri Eye</p> <p>7 Institute to locate a retina surgeon?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then so what's the community</p> <p>10 worksheet?</p> <p>11 A. This would be a worksheet that we take with us on</p> <p>12 the profile to gather information based on community,</p> <p>13 hospital while we're conducting the onsite profile.</p> <p>14 Q. So this looks like a -- this is a blank document.</p> <p>15 Do you see that?</p> <p>16 A. I see that, yes.</p> <p>17 Q. And it's not blank. It's not been filled in.</p> <p>18 A. It's not been filled in.</p> <p>19 Q. Is this community worksheet published on Merritt</p> <p>20 Hawkins web site?</p> <p>21 A. On our web site?</p> <p>22 Q. Right.</p> <p>23 A. No.</p> <p>24 Q. And do you consider this to be a confidential</p> <p>25 document of Merritt Hawkins?</p>

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<p>1 A. I do.</p> <p>2 Q. And why is that?</p> <p>3 A. Confidential because this is something that we've</p> <p>4 put together and it's something that we wouldn't want</p> <p>5 others to -- to know to what extent we go on a profile,</p> <p>6 whether it be another staffing agency or -- or</p> <p>7 competitor. So yeah, I would see it as confidential.</p> <p>8 Q. Is the point of the profile for the search</p> <p>9 consultant to get some basic information about the</p> <p>10 location where the -- the placement is?</p> <p>11 A. Where the future placement would be, yes, but</p> <p>12 it's -- yeah, it's to go out and learn about the</p> <p>13 community, learn about the practice, meet with the</p> <p>14 administration, take it to the hospital. So yes, it's</p> <p>15 definitely a fact gathering endeavor and we come back</p> <p>16 and then recruit off the information we've learned on</p> <p>17 the profile.</p> <p>18 Q. Okay. So one of Scott's -- Scott Gresham's job</p> <p>19 responsibilities would be able -- would be to go out and</p> <p>20 get the sorts of information that are on the community</p> <p>21 worksheet which is now Exhibit 109, right?</p> <p>22 A. That's correct.</p> <p>23 Q. And just to be perfectly frank, part of the</p> <p>24 problem with some of your placements is that they're in</p> <p>25 places like Springfield, Missouri where perhaps people</p>	<p>1 physician.</p> <p>2 Q. This is more of a series of prompts about the</p> <p>3 source of information that might be gathered on a</p> <p>4 profile visit, correct?</p> <p>5 A. Correct.</p> <p>6 Q. All right. And so is the information that's put</p> <p>7 on a community worksheet is that shared with the client</p> <p>8 as well?</p> <p>9 A. Yes. We do put together a separate document that</p> <p>10 is called the post profile letter. That is information</p> <p>11 that we will put into the letter of information that we</p> <p>12 learned on the profile to make sure that our notes are</p> <p>13 accurate, to make sure what we're presenting is -- is</p> <p>14 accurate and then they review that and let us know that</p> <p>15 yes, okay, we've agreed to the post profile letter or</p> <p>16 otherwise they want to make some changes to it and we</p> <p>17 adhere to that.</p> <p>18 Q. I got you. So they might have something to add</p> <p>19 or something to correct, right?</p> <p>20 A. Correct.</p> <p>21 Q. All right. And then although this is -- there is</p> <p>22 a legend here at the bottom confidential, attorneys'</p> <p>23 eyes only, you've seen this document in its native state</p> <p>24 as used by your search consultants and it's not marked</p> <p>25 confidential, is it?</p>
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<p>1 don't want to go. So you have to sell the community</p> <p>2 itself, right?</p> <p>3 A. That is correct, yeah.</p> <p>4 Q. And so once this community worksheet is filled</p> <p>5 out, is it shared with the physician?</p> <p>6 A. No, it's not.</p> <p>7 Q. None of the information on here is shared?</p> <p>8 A. Oh, it's shared verbally, but you're asking if</p> <p>9 this information that --</p> <p>10 Q. The document itself is not shared?</p> <p>11 A. The document itself is not shared. The</p> <p>12 information that we have learned on the profile.</p> <p>13 Basically we go off this as notes to present to our --</p> <p>14 our candidates verbally.</p> <p>15 Q. Okay. So it's not -- you don't ever put anything</p> <p>16 in writing that says here's all the great things that</p> <p>17 Springfield, Missouri has to offer and why you may want</p> <p>18 to go there?</p> <p>19 A. Yes, we would do that through an e-mail or</p> <p>20 something of that nature. I guess I'm not understanding</p> <p>21 your question right. Do we send this document as a</p> <p>22 whole to a physician? The answer to that is no.</p> <p>23 Q. Right.</p> <p>24 A. The information that we've learned on the profile</p> <p>25 we could incorporate into an e-mail and send to a</p>	<p>1 A. No.</p> <p>2 Q. Is it -- I take it that everything that the</p> <p>3 search consultant touches in connection with his or her</p> <p>4 search the company believes is confidential?</p> <p>5 A. Yes, I think so.</p> <p>6 Q. Is there anything that the search consultant uses</p> <p>7 in his or her search that the company does not consider</p> <p>8 to be confidential?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Do you search your employees before they leave</p> <p>11 the building?</p> <p>12 A. Search them as far as --</p> <p>13 Q. Like physically?</p> <p>14 A. -- pat them down?</p> <p>15 Q. Right. Physically search them.</p> <p>16 A. I do not. We do not.</p> <p>17 Q. Do you retain the right as their employer to look</p> <p>18 through their personal effects when they leave the</p> <p>19 building?</p> <p>20 A. Yes.</p> <p>21 Q. Have you ever done that?</p> <p>22 A. As far as company information through the</p> <p>23 computers; is that what you're asking?</p> <p>24 Q. Well, I'm talking about you think you have a</p> <p>25 problem employee, maybe you think this employee is</p>

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<p>1 walking off with your community worksheet or some other</p> <p>2 top secret Merritt Hawkins document, have you ever -- or</p> <p>3 do you know of anyone at Merritt Hawkins ever stopping</p> <p>4 that employee and asking to go through their personal</p> <p>5 effects?</p> <p>6 A. I'm not aware of a situation like that to go</p> <p>7 through their personal effects as far as, you know,</p> <p>8 they're walking out with their personal supplies in a</p> <p>9 box. I'm not aware of an instance where we've asked to</p> <p>10 scour through that box to see if they have any personal</p> <p>11 information in there.</p> <p>12 Q. So when you terminate an employee, do you stand</p> <p>13 by while they gather all their materials?</p> <p>14 A. Yes.</p> <p>15 Q. And then you're the person who's in charge of</p> <p>16 escorting them out of the building?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. When was the last time you did that?</p> <p>19 A. It was with a gentleman by the name of Kevin</p> <p>20 Dodson and I would say probably about seven months ago.</p> <p>21 Q. Do you know whether Kevin Dodson -- well, why did</p> <p>22 you terminate Kevin Dodson?</p> <p>23 A. For production.</p> <p>24 Q. Do you know if he sought employment at Consilium?</p> <p>25 A. Did Kevin Dodson?</p>	<p>1 Q. Why not besides the fact that you're suing him?</p> <p>2 Would you like to have him back in the absence of the</p> <p>3 lawsuit?</p> <p>4 A. I would not, no.</p> <p>5 Q. And you consider him a flake?</p> <p>6 A. Yeah, absolutely.</p> <p>7 Q. And was that true while he worked here?</p> <p>8 A. Towards the latter part he became a little bit</p> <p>9 flaky. There was, you know, concerns to his promptness</p> <p>10 of -- of being at work. He called in sick a couple of</p> <p>11 times. So there was some concerns to -- if you want to</p> <p>12 define it as flakiness, but the way he resigned that</p> <p>13 would certainly categorize that as very flaky.</p> <p>14 Q. Did he spend a lot of time outside smoking with</p> <p>15 Breanna Elliott?</p> <p>16 A. He did.</p> <p>17 Q. Was that -- was that a problem for you?</p> <p>18 A. I mean, yeah, it took away from time being spent</p> <p>19 in the office and being productive, yeah.</p> <p>20 Q. I mean, you can't make calls if you're smoking a</p> <p>21 cigarette in the back, right?</p> <p>22 A. No.</p> <p>23 MS. NOWAK: Objection; argumentative.</p> <p>24 Q. (BY MR. VOLNEY) Do you have any expectation that</p> <p>25 -- well, do -- do your employees ever work from home?</p>
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<p>1 Q. Right.</p> <p>2 A. I'm not aware of that.</p> <p>3 Q. Where is he now; do you know?</p> <p>4 A. I'm not aware of that either.</p> <p>5 Q. How long did he work here?</p> <p>6 A. I believe five years.</p> <p>7 Q. All right. Let's see. You'll confirm for me</p> <p>8 that the date on that document, the e-mail Exhibit 109</p> <p>9 is July 20th, 2012?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And that's approximately two months before</p> <p>12 Mr. Gresham quit, right?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know if Mr. Gresham has used that document</p> <p>15 or used that document while he was at Consilium?</p> <p>16 A. I'm not aware of that.</p> <p>17 Q. Do you know what Scott Gresham is doing now?</p> <p>18 A. Do I know what he's doing now?</p> <p>19 Q. Right.</p> <p>20 A. Yes.</p> <p>21 Q. What is that?</p> <p>22 A. Selling e-cigarette.</p> <p>23 Q. Have you contacted him to ask him to come back to</p> <p>24 Merritt Hawkins?</p> <p>25 A. I have not.</p>	<p>1 A. Yes. In some instances, yeah. I mean, as far as</p> <p>2 during the normal work hours, no. We are required to be</p> <p>3 here at a certain time. We depart at a certain time.</p> <p>4 What's done after hours yes, we have capabilities of</p> <p>5 working from home through a secured VPN access and --</p> <p>6 and with our mobile devices we're able to access e-mail.</p> <p>7 Q. Do you know whether Scott Gresham ever accessed</p> <p>8 the VPN?</p> <p>9 A. I'm not aware of if he did or not.</p> <p>10 Q. All right. Let's say Mr. Gresham has a trip</p> <p>11 planned to Springfield, Missouri to fill out that</p> <p>12 community worksheet. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Would you expect him to take a copy of it with</p> <p>15 him?</p> <p>16 A. A hard copy, I would, yes.</p> <p>17 Q. Would you ever tell your employees that they're</p> <p>18 not allowed to take electronic copies of company</p> <p>19 documents?</p> <p>20 A. I've never told an employee that you can't take</p> <p>21 an electronic, but the way that we retrieve our files</p> <p>22 and once going back to when a marketer brings in a</p> <p>23 search and then that search is then transferred to the</p> <p>24 recruiter we get a -- a white file we call it and in</p> <p>25 that file it has these documents already printed out and</p>

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<p>1 are in the file for us to bring on the road to get the</p> <p>2 information filled out and it's already been printed and</p> <p>3 supplied into that document into that folder.</p> <p>4 Q. Is there a prohibition in Exhibit 105 on a</p> <p>5 company using -- for an employee using their personal</p> <p>6 e-mail for company business?</p> <p>7 A. So your question is: Can they use their company</p> <p>8 e-mail for business?</p> <p>9 Q. Sorry. No, because I'm assuming they can. My</p> <p>10 question is: Can they use their personal e-mail for any</p> <p>11 company-related business?</p> <p>12 A. I'm not aware of using your personal e-mail to</p> <p>13 conduct business within Merritt Hawkins.</p> <p>14 Q. Is there any prohibition in that system's use</p> <p>15 policy for using your personal e-mail for</p> <p>16 company-related business?</p> <p>17 A. I'm not seeing anything in here as far as</p> <p>18 personal e-mails. What I do see is personal files on</p> <p>19 computer and network must be removed.</p> <p>20 Q. Well, I mean, to be fair that bullet point that</p> <p>21 you're referring to does allow an employee to</p> <p>22 temporarily store company documents outside of the</p> <p>23 company network, right?</p> <p>24 A. I don't know that it's a common practice to store</p> <p>25 company information on a -- on a personal device.</p>	<p>1 from his work account to his personal account, correct?</p> <p>2 MS. NOWAK: Objection, argumentative.</p> <p>3 A. I believe it's not hidden. I'm not -- I'm not --</p> <p>4 I'm not sure.</p> <p>5 Q. (BY MR. VOLNEY) I mean, you as the employer</p> <p>6 retain the right to go and look at every single e-mail</p> <p>7 that goes in and out of Scott Gresham's account?</p> <p>8 A. Yes. Yes.</p> <p>9 Q. Right. In fact, I think you say that here in</p> <p>10 your system's use policy that the employee should expect</p> <p>11 no privacy with respect to the information that goes in</p> <p>12 and out of their work account, right?</p> <p>13 A. It's all company information. It's all</p> <p>14 company -- yeah. Yeah, it's all company property, yes.</p> <p>15 Q. Okay. What is Hoopeston? Do you know what</p> <p>16 Hoopeston is?</p> <p>17 A. It's a community, Hoopeston, Missouri.</p> <p>18 Q. Missouri? Illinois?</p> <p>19 A. Illinois. Yeah, it was in Illinois, maybe.</p> <p>20 Q. Yeah. We're on 111?</p> <p>21 A. Yes.</p> <p>22 (Exhibit Number 111 marked.)</p> <p>23 Q. (BY MR. VOLNEY) Okay. This is another of the --</p> <p>24 the documents the fine folks of Dykema provided to me as</p> <p>25 evidence that Mr. Gresham sending information from his</p>
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<p>1 Q. Well, that -- that wasn't my question. My</p> <p>2 question was: This policy allows an employee to</p> <p>3 transfer from or store outside the network company files</p> <p>4 or data for temporary use to perform authorized work.</p> <p>5 Do you see that?</p> <p>6 A. I see it.</p> <p>7 Q. Okay. And you agree that that's the company's</p> <p>8 systems use policy?</p> <p>9 A. As it states there, yes.</p> <p>10 Q. Okay. And Mr. Gresham did go to Springfield,</p> <p>11 Missouri to fill out the community worksheet for the</p> <p>12 retina surgery center, right?</p> <p>13 A. That is correct.</p> <p>14 Q. Do you know if he went on maybe July 23rd of 2012</p> <p>15 or thereabouts?</p> <p>16 A. I would say yes, thereabouts, yeah.</p> <p>17 (Exhibit Number 110 marked.)</p> <p>18 Q. (BY MR. VOLNEY) Okay. So let's look at 110.</p> <p>19 This is again, Exhibit 110 an e-mail from Scott Gresham</p> <p>20 at his work account to his home account forwarding some</p> <p>21 flight information and contact information related to</p> <p>22 the Missouri eye client, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Now, just to be clear, it's not -- it's not</p> <p>25 hidden from Merritt Hawkins that he's sending e-mails</p>	<p>1 work account to his personal account and we've marked it</p> <p>2 as Exhibit 111; do you see that? With respect to --</p> <p>3 well, is the information here, is it confidential</p> <p>4 information belonging to Merritt Hawkins?</p> <p>5 A. I wouldn't see it as confidential information</p> <p>6 belonging to Merritt Hawkins. It's his flight</p> <p>7 itinerary.</p> <p>8 Q. Do you know why it's marked confidential? Is the</p> <p>9 fact that he went to the hotel, the Super 8 Motel in</p> <p>10 Wysocka on July 8th, 2012 somehow valuable confidential</p> <p>11 information belonging to Merritt Hawkins?</p> <p>12 MS. NOWAK: Objection; argumentative. And</p> <p>13 John, I'll stipulate that counsel applied that</p> <p>14 endorsement.</p> <p>15 MR. VOLNEY: Indiscriminately. Will you</p> <p>16 stipulate to that? Okay. Let's continue this process.</p> <p>17 I don't have that many more. I can go out to my car for</p> <p>18 the other box. Teasing. Let's look at 112.</p> <p>19 (Exhibit Number 112 marked.)</p> <p>20 Q. (BY MR. VOLNEY) This is a document that again</p> <p>21 has been produced to me by your counsel and this one's</p> <p>22 marked confidential attorneys' eyes only. And -- all it</p> <p>23 lists is an e-mail address. Do you know whose e-mail</p> <p>24 address that is?</p> <p>25 A. I have no idea.</p>

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<p>1 Q. Do you know if that e-mail address belongs to a</p> <p>2 client or prospect of Merritt Hawkins?</p> <p>3 A. I'm not aware of that.</p> <p>4 Q. Can we look in the Mhacs system and figure out if</p> <p>5 that e-mail address is in there anywhere; is that even</p> <p>6 possible?</p> <p>7 A. It probably would be possible. Anyone that works</p> <p>8 here with Merritt Hawkins knows that Mhacs is pretty</p> <p>9 outdated so, yeah, I can imagine we could probably at</p> <p>10 some point research how to get ahold of that and find</p> <p>11 out what that e-mail is.</p> <p>12 Q. When you say outdated, I take it you mean it's a</p> <p>13 cumbersome technology?</p> <p>14 A. It is cumbersome, but I mean, it's not --</p> <p>15 Q. Not outdated. I mean, it's supposed to contain</p> <p>16 up-to-date information?</p> <p>17 A. It's all updated information, it's just -- yeah,</p> <p>18 cumbersome would be a better description.</p> <p>19 Q. Okay. Got it. Were Scott Gresham and Breanna</p> <p>20 Elliott friends?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know if Breanna Elliott has applied for</p> <p>23 any job at Consilium?</p> <p>24 A. I'm not aware of that.</p> <p>25 Q. She's still currently employed here?</p>	<p>1 company contends Mr. Gresham improperly e-mailed to his</p> <p>2 home e-mail account?</p> <p>3 A. I have not seen that. I've seen a partial list</p> <p>4 of some information but not a full list.</p> <p>5 Q. All right. Your understanding is it's in the</p> <p>6 hundreds?</p> <p>7 A. My understanding is, yeah, somewhere in there.</p> <p>8 Q. Did you ever see Mr. Gresham in possession of a</p> <p>9 thumb drive while he was employed at Merritt Hawkins?</p> <p>10 A. I did not.</p> <p>11 Q. Tell me how the room arranged. Is it just like a</p> <p>12 big bullpen of cubicles?</p> <p>13 A. Yes.</p> <p>14 Q. And is it -- are they low cubicles or high</p> <p>15 cubicles?</p> <p>16 A. Not high. I mean, they're probably at that level</p> <p>17 if you were standing.</p> <p>18 Q. Okay. So you -- is -- do you have a cubicle or</p> <p>19 are you in an office on the perimeter?</p> <p>20 A. No. I have a cubicle.</p> <p>21 Q. Okay. And then -- are you -- do you on your</p> <p>22 day-to-day basis walk around and talk to people and sort</p> <p>23 of encourage them to work harder?</p> <p>24 A. Yes, I do.</p> <p>25 MR. VOLNEY: Okay. I need to look at</p>
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<p>1 A. Yes.</p> <p>2 Q. She is a search consultant too, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Is it -- do the search consultants</p> <p>5 occasionally e-mail back and forth company-related</p> <p>6 documents?</p> <p>7 A. Yes.</p> <p>8 Q. For example, CVs of doctors or prospects?</p> <p>9 A. Yes.</p> <p>10 Q. So you don't think there's anything wrong, if for</p> <p>11 example, Breanna Elliott e-mailed a CV to Scott?</p> <p>12 A. I don't see anything wrong with that, no.</p> <p>13 Q. Is there an e-mail group called MHA Recruiting?</p> <p>14 A. Yes.</p> <p>15 Q. So you could just do a -- an effective blast</p> <p>16 e-mail to everybody in that e-mail group and everybody</p> <p>17 gets it?</p> <p>18 A. That's correct.</p> <p>19 Q. And you would expect the folks who are working in</p> <p>20 your Heartland search department -- or search consulting</p> <p>21 department to share information about potential</p> <p>22 recruits, doctors?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Bear with me a moment. Have you seen any</p> <p>25 listing of all of the documents or e-mails that the</p>	<p>1 something right quick. Sorry. Do you want to take a</p> <p>2 lunch break now? Why don't we go off the record and we</p> <p>3 can discuss this?</p> <p>4 THE VIDEOGRAPHER: Off the record at 12:03</p> <p>5 p.m.</p> <p>6 (Break taken from 12:03 p.m. to 12:45 p.m.)</p> <p>7 THE VIDEOGRAPHER: We're back on the record</p> <p>8 at 12:45 p.m.</p> <p>9 MR. VOLNEY: Okay. So we've had lunch.</p> <p>10 Thank you.</p> <p>11 Q. (BY MR. VOLNEY) Let's -- let's go back to</p> <p>12 talking about Mr. Gresham. And I want to followup on</p> <p>13 something that we discussed earlier. When Mr. Gresham</p> <p>14 was -- quit he was not replaced by a new person,</p> <p>15 correct?</p> <p>16 A. He was actually replaced with Laura Wilmeth</p> <p>17 (phonetic). She was a person that about the same time</p> <p>18 of his resigning through e-mail we had simultaneously</p> <p>19 hired Laura and then she filled in the shoes of Scott</p> <p>20 Gresham.</p> <p>21 Q. Okay. So that's a little bit different from what</p> <p>22 you told me before we had our lunch break, which I</p> <p>23 understood to be that it's not a one-to-one replacement</p> <p>24 when somebody quits in your department. Why are you</p> <p>25 changing your testimony?</p>

23 (Pages 86 to 89)

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<p>1 A. Well, it's not necessarily is it a one on one, 2 but we have just recently hired and I can't honestly 3 remember if it was -- I mean, it was right at the same 4 time that Scott had resigned and we had hired Laura. We 5 essentially at that time had Laura replace Scott. I 6 believe we actually had another new hire in the wings as 7 well at that time so...</p> <p>8 Q. How much did you pay to train Laura Wilmeth; do 9 you know?</p> <p>10 A. I don't have that information.</p> <p>11 Q. How big of a recruiting class was Laura Wilmeth 12 in to go through your recruiter in-training program?</p> <p>13 A. How big was that class?</p> <p>14 Q. Yeah.</p> <p>15 A. I'm not sure.</p> <p>16 Q. More than 10?</p> <p>17 A. I'm not sure.</p> <p>18 Q. Were you in hiring mode -- or were you in hiring 19 mode back in September of 2012?</p> <p>20 A. We were.</p> <p>21 Q. Would it be possible to find records that would 22 indicate how many people were in that recruiting class?</p> <p>23 A. It would definitely be possible to find records. 24 I don't have those records.</p> <p>25 Q. When -- is the gentleman, the training person's</p>	<p>1 in tenure and age and then we put them in a research 2 role and groom them to be a recruiter.</p> <p>3 Q. Why didn't you put a senior search consultant in 4 place of -- or to takeover Mr. Gresham's role?</p> <p>5 A. Why did we not?</p> <p>6 Q. Why did you not.</p> <p>7 A. That's not a common practice to -- we don't hire 8 people as a senior search consultant and most teams are 9 made up of search and senior and we don't generally 10 transfer team members from team to team.</p> <p>11 Q. How many search members did you have on your 12 Heartland team in September of 2012?</p> <p>13 A. I can't answer that. I wouldn't be -- I don't 14 know the accurate number -- what the accurate number 15 was.</p> <p>16 Q. So same -- you would give me the same answer if I 17 asked you for how many senior search consultants you had 18 on your team?</p> <p>19 A. I would.</p> <p>20 Q. Do you have records that would reflect that?</p> <p>21 A. I do.</p> <p>22 Q. Do you have records that would reflect how many 23 placements your senior search consultants did in 2013?</p> <p>24 A. Yeah, that's a little bit more challenging 25 because at times a senior search consultant, you know,</p>
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<p>1 name Michael Faye?</p> <p>2 A. That is correct.</p> <p>3 Q. Is he the person who's principally in charge here 4 of training?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Do you know how much money he makes a year?</p> <p>7 A. I don't.</p> <p>8 Q. Do you know how many people he trains?</p> <p>9 A. I don't.</p> <p>10 Q. I guess we'd have to ask him, I take it. Does he 11 have anybody who works for him or with him?</p> <p>12 A. He handles the over -- he oversees research along 13 with his duties of doing the on boarding and corporate 14 training, he also does run the research department.</p> <p>15 Q. Is -- are there other people who are in the on 16 boarding corporate training department?</p> <p>17 A. With Merritt Hawkins, no.</p> <p>18 Q. Does he have that function just for Merritt 19 Hawkins?</p> <p>20 A. Yes.</p> <p>21 Q. Who else is in the research department?</p> <p>22 A. Research department, are those that we have hired 23 who do not have the skill set as of yet to be a 24 recruiter. Either they're newly out of college or lack 25 experience in recruiting. Generally, they're very young</p>	<p>1 mid year they could be promoted to that senior search 2 status. So I mean, could we find it out, yes, we could. 3 It would be a little more cumbersome.</p> <p>4 Q. Frankly, for every person who worked in the 5 Heartland as a search consultant in 2012 you'd be able 6 to retrieve records and indicate how many placements 7 they made?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And you would easily be able to retrieve records 10 as to how much you had paid them in compensation?</p> <p>11 A. Yes, sir.</p> <p>12 Q. I take it they are paid a base salary plus 13 commission?</p> <p>14 A. That's correct.</p> <p>15 Q. How -- is Laura Wilmeth still with the company?</p> <p>16 A. She is.</p> <p>17 Q. And she started in September of 2012?</p> <p>18 A. That sounds to be accurate, yes.</p> <p>19 Q. And was she hired specifically to replace Scott 20 Gresham?</p> <p>21 A. She was hired into the class as a replacement for 22 Scott Gresham.</p> <p>23 Q. Was she told that she was going to be replacing 24 Scott Gresham?</p> <p>25 A. No.</p>

24 (Pages 90 to 93)

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<p>1 Q. When was she hired? Do you know the date?</p> <p>2 A. I don't know the date.</p> <p>3 Q. Was it before September 24th of 2012?</p> <p>4 A. I don't know the date.</p> <p>5 Q. Who would have records of the date of when she</p> <p>6 was hired?</p> <p>7 A. Talent acquisition and it's -- it would be in her</p> <p>8 folder with -- with HR.</p> <p>9 Q. When Scott Gresham sent you an e-mail terminating</p> <p>10 his employment on September 24 of 2012, did you</p> <p>11 immediately go to talent acquisition and say, we've got</p> <p>12 to find somebody to replace Scott?</p> <p>13 A. I don't know that to be the case. We definitely</p> <p>14 at that time were -- were looking for candidates and so</p> <p>15 yes, I mean, when Scott did resign, absolutely. It was</p> <p>16 -- we evaluate each team and per the way our quotas are</p> <p>17 set up, we're committed to having a certain metric</p> <p>18 placement-wise and you need to have the head count to</p> <p>19 get to that placement number. So anytime we have a</p> <p>20 recruiter resign, then yes, we will hire to replace that</p> <p>21 person to make sure that we're able to obtain our quota.</p> <p>22 Q. How many recruiters in training did you have as</p> <p>23 of September 24th, 2012?</p> <p>24 A. I don't know.</p> <p>25 Q. Did -- would it have been common for you to have</p>	<p>1 training program?</p> <p>2 A. Currently today we have as a company five</p> <p>3 recruiters that are in training.</p> <p>4 Q. All right. Who is Deleon McKee?</p> <p>5 A. He was a marketer that worked for Merritt Hawkins</p> <p>6 in the Heartland region.</p> <p>7 Q. And when did he quit?</p> <p>8 A. I don't know that date.</p> <p>9 Q. I take it he has quit?</p> <p>10 A. And it was years ago, yes. Actually, he was</p> <p>11 terminated, if that makes any difference.</p> <p>12 Q. It does, years ago?</p> <p>13 A. Years.</p> <p>14 Q. Terminated for lack of performance?</p> <p>15 A. I think there were other things that were</p> <p>16 involved, but I don't know all of the details, but yeah,</p> <p>17 it was a mutual departure.</p> <p>18 Q. Did you terminate him?</p> <p>19 A. I did not.</p> <p>20 Q. Do you know where he currently works?</p> <p>21 A. I do not.</p> <p>22 Q. Was he a valuable employee of Merritt Hawkins?</p> <p>23 A. He was to -- at one level. I should say at one</p> <p>24 point in time and then he was doing some things that</p> <p>25 were inappropriate in the way of, you know, sending in</p>
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<p>1 recruiters in training at that time?</p> <p>2 A. It would be common to have a recruiter in</p> <p>3 training at that time if we had someone who was possibly</p> <p>4 on corrective action and we didn't see that person being</p> <p>5 able to make it past the fit process which is a peer</p> <p>6 performance improvement plan or otherwise we had someone</p> <p>7 resign.</p> <p>8 Q. So is it your testimony that when a search</p> <p>9 consultant resigns -- let's say Laura Wilmeth resigns</p> <p>10 tomorrow. She is having a -- maybe Monday. Probably</p> <p>11 wouldn't resign on Saturday, maybe she would. Resigns</p> <p>12 on Monday, is it at that point that you would then take</p> <p>13 up the mantle of calling talent acquisition and talent</p> <p>14 acquisition would go out and find a person and then that</p> <p>15 point that person is made a recruiter in training?</p> <p>16 A. That in most cases would be the appropriate</p> <p>17 scenario, yes.</p> <p>18 Q. So when somebody quits as a search consultant, it</p> <p>19 may take a period of weeks or months to find somebody to</p> <p>20 replace that person, right?</p> <p>21 A. Correct.</p> <p>22 Q. In fact, it takes at least 20 weeks because</p> <p>23 that's the length of the training program?</p> <p>24 A. It takes 20 weeks for training, yes.</p> <p>25 Q. And how many people do you currently have in your</p>	<p>1 reimbursements for travel that, you know, wasn't</p> <p>2 necessarily going out traveling and meeting clients. It</p> <p>3 was almost like personal travel to the Chicago market</p> <p>4 where he -- where his territory was.</p> <p>5 Q. Okay. So terminated by Merritt Hawkins. Was it</p> <p>6 over a year ago that he was terminated by Merritt</p> <p>7 Hawkins?</p> <p>8 A. Over a year ago.</p> <p>9 Q. Right.</p> <p>10 A. Yes.</p> <p>11 Q. Do you have yourself an employment agreement with</p> <p>12 Merritt Hawkins?</p> <p>13 A. I do.</p> <p>14 Q. Does it have a one-year noncompete?</p> <p>15 A. It does.</p> <p>16 Q. Does it have a three-year non-solicitation?</p> <p>17 A. Thirty-six months, yes, sir.</p> <p>18 Q. What is your understanding of -- if you, Tim</p> <p>19 Beidle, quit Merritt Hawkins tomorrow, how long would</p> <p>20 you have to wait before you could go to work for Arthur</p> <p>21 Marshall?</p> <p>22 MS. NOWAK: Objection to the extent it calls</p> <p>23 for a legal conclusion.</p> <p>24 Q. (BY MR. VOLNEY) I'm asking for your</p> <p>25 understanding. And I'm assuming you're not a lawyer.</p>

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<p>1 A. My understanding would be a year.</p> <p>2 Q. Okay. And then how long would you have to wait</p> <p>3 before you could contact folks at Merritt Hawkins about</p> <p>4 potentially coming to work at Arthur Marshall?</p> <p>5 MS. NOWAK: Objection to the extent it calls</p> <p>6 for a legal conclusion.</p> <p>7 A. To my understanding it would be 36 months.</p> <p>8 Q. (BY MR. VOLNEY) What's the purpose of that</p> <p>9 36-month waiting period?</p> <p>10 A. We would not want someone to solicit employees</p> <p>11 from our company and have them go to another company.</p> <p>12 Q. Do you know why Scott Gresham quit?</p> <p>13 A. I understand that he was discussed -- he was</p> <p>14 discussed the opportunity at Consilium by Billy Bowden.</p> <p>15 Q. Do you know whether Scott Gresham had a job at</p> <p>16 Consilium before he quit?</p> <p>17 A. I do not know that.</p> <p>18 Q. Was there anything -- I think the e-mail by which</p> <p>19 he quit is attached as Exhibit C to our -- to the</p> <p>20 complaint here which is one of these exhibits. Maybe</p> <p>21 it's this one at the very bottom here. So it's the next</p> <p>22 to last page. And I just want to -- what I want to do</p> <p>23 is I want to understand the sequence of events. He quit</p> <p>24 or gave you -- or sent you this e-mail on</p> <p>25 September 24th, 2012 at 7 a.m.?</p>	<p>1 what was going on with those two potential closes?</p> <p>2 A. Yes, through those candidates and clients, yes.</p> <p>3 Q. Were those potential closes closed?</p> <p>4 A. One of the candidates never interviewed. So that</p> <p>5 was completely fabricated and the other one did not</p> <p>6 close.</p> <p>7 Q. One of the candidates never interviewed. What</p> <p>8 does that mean?</p> <p>9 A. One of the candidates that he felt like he was</p> <p>10 going to be able to close over the weekend that</p> <p>11 candidate never even interviewed for -- for the position</p> <p>12 so that documentation and that interview was false.</p> <p>13 Q. Was -- so there was documentation indicating that</p> <p>14 that candidate had interviewed?</p> <p>15 A. Yeah.</p> <p>16 Q. But he, in fact, did not?</p> <p>17 A. That is correct.</p> <p>18 Q. All right. And since you left the voice mail</p> <p>19 message for Mr. Gresham on September 24th of 2012, have</p> <p>20 you had any other communications with Mr. Gresham?</p> <p>21 A. I have not.</p> <p>22 Q. Have you tried to communicate with Mr. Gresham?</p> <p>23 A. I have not.</p> <p>24 Q. I take it that this is a free country and we've</p> <p>25 repealed slavery sometime ago. So it was certainly</p>
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<p>1 A. That's correct.</p> <p>2 Q. Do you recall at what point during the day you</p> <p>3 read the e-mail?</p> <p>4 A. Generally, I'm in the office between the hours of</p> <p>5 8:00 and 8:30, so it would've been somewhere around that</p> <p>6 period of time.</p> <p>7 Q. What did you do after you got this e-mail?</p> <p>8 A. I believe I sent it to Tom Florence and walked</p> <p>9 down to his office to make sure he had received it and</p> <p>10 may have sent it to Gurdy as well.</p> <p>11 Q. Is Gurdy in HR?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And did you try to call Scott?</p> <p>14 A. I don't know that I did -- you know, in fact,</p> <p>15 maybe I did call him because he had two potential closes</p> <p>16 and I do remember this. He had two potential closes of</p> <p>17 physicians that he was working with that he thought he</p> <p>18 was going to be able to close over the weekend and so I</p> <p>19 did leave him a message to follow up with him to see</p> <p>20 where things stood with that -- with those doctors.</p> <p>21 Q. You left him a voice mail message?</p> <p>22 A. I did.</p> <p>23 Q. Did he respond?</p> <p>24 A. No.</p> <p>25 Q. Did you, yourself, make efforts to figure out</p>	<p>1 Mr. Gresham's right to quit his employment at Merritt</p> <p>2 Hawkins?</p> <p>3 MS. NOWAK: Objection; argumentative.</p> <p>4 Q. (BY MR. VOLNEY) It means an at-will employment</p> <p>5 relationship, correct? He not required to come to work</p> <p>6 here every day if he doesn't want to?</p> <p>7 A. That's correct.</p> <p>8 Q. I mean, employees here quit all the time?</p> <p>9 MS. NOWAK: Objection.</p> <p>10 Q. (BY MR. VOLNEY) Right?</p> <p>11 A. Yes. He can resign his position at Merritt</p> <p>12 Hawkins.</p> <p>13 Q. Okay. So you agree with me that he at least has</p> <p>14 that right to resign his position, right?</p> <p>15 A. I agree.</p> <p>16 Q. And sitting here today knowing what you know now</p> <p>17 about this fabricated candidate, you're probably happy</p> <p>18 he resigned?</p> <p>19 A. Well, I mean, he was doing well and I think</p> <p>20 towards the latter part of his tenure with Merritt</p> <p>21 Hawkins we saw some areas of -- of concern, but the</p> <p>22 way -- and what we feel is an appropriate way of</p> <p>23 resigning, Scott did not provide that at all.</p> <p>24 Q. What's the appropriate way of resigning from</p> <p>25 Merritt Hawkins?</p>

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<p>1 A. The appropriate way would be to come in with a</p> <p>2 letter of resignation, to sit down with leadership and</p> <p>3 recruiters and go over their files as far as</p> <p>4 documentation for each candidate and client that they're</p> <p>5 working with and to spend, you know, a day to go over</p> <p>6 that information and to depart and -- you know and to</p> <p>7 depart in a good way.</p> <p>8 Q. Do you spend a day going over the files and the</p> <p>9 candidates that they're working with with the people you</p> <p>10 terminate?</p> <p>11 A. I didn't terminate him.</p> <p>12 Q. Well, I'm talking about you and your job as the</p> <p>13 VP of the Heartland. When you're in the business of</p> <p>14 terminating somebody because they're not performing, do</p> <p>15 you spend an entire day sitting down with them having an</p> <p>16 exit interview?</p> <p>17 A. No, we do not.</p> <p>18 Q. You walk them off the property I think is what</p> <p>19 you told me earlier?</p> <p>20 A. Yes, sir.</p> <p>21 Q. There's no contractual requirement, I take it,</p> <p>22 that Scott sit down with you and have an exit interview,</p> <p>23 right?</p> <p>24 A. There's no -- you're right. There's no</p> <p>25 contractual agreement, but it's just standard protocol</p>	<p>1 2012 to September 24, 2013, has Laura Wilmeth met her</p> <p>2 quota?</p> <p>3 A. Yes.</p> <p>4 Q. So she's had over one placement per month?</p> <p>5 A. Yes.</p> <p>6 Q. Has she done more than four or five interviews</p> <p>7 per month?</p> <p>8 A. Yes.</p> <p>9 Q. Thanks. Okay. Let's see. Let's talk a little</p> <p>10 bit about this agreement and then we'll kick off for the</p> <p>11 weekend. I want you to look at exhibit -- Exhibit A --</p> <p>12 actually, let's not fool with Exhibit A. Let's look at</p> <p>13 Exhibit B?</p> <p>14 A. Of 107?</p> <p>15 Q. Yes, sir. Thank you for clarifying for the</p> <p>16 record.</p> <p>17 A. What page is that?</p> <p>18 Q. Oh, sorry. I think it's 37. Yes, 37 there at</p> <p>19 the top. So this is a copy of Mr. Gresham's employment</p> <p>20 agreement, his second employment agreement with Merritt</p> <p>21 Hawkins, all right?</p> <p>22 A. Okay.</p> <p>23 Q. Have you seen his first employment agreement with</p> <p>24 Merritt Hawkins?</p> <p>25 A. I have not.</p>
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<p>1 and if you want a good reference for future by the way</p> <p>2 you want to handle it and it's just the right way of</p> <p>3 handling it. I don't know if sending an e-mail is an</p> <p>4 appropriate way of terminating your relationship with a</p> <p>5 company.</p> <p>6 Q. You testified earlier that you had some concerns</p> <p>7 with Mr. Gresham's performance before he terminated his</p> <p>8 employment at Merritt Hawkins. What were those concerns</p> <p>9 specifically?</p> <p>10 A. Just areas of production, being lighter than we</p> <p>11 had seen in the past. It's -- he was always a pretty</p> <p>12 high performer, high volume setter and -- and we had</p> <p>13 seen the volume begin to -- to decline a little bit. I</p> <p>14 mean, that happens. Sometimes you hit a wall in this</p> <p>15 industry and you know, sometimes you take a lot of kicks</p> <p>16 in the gut and you've got to just bounce back from it,</p> <p>17 but sometimes it -- it you know, you need that little</p> <p>18 extra push and drive to get through it.</p> <p>19 Q. What was his quota in 2012?</p> <p>20 A. What was his quota?</p> <p>21 Q. Yep.</p> <p>22 A. Pretty much the standard quota of one placement a</p> <p>23 month. I mean, that's pretty much the minimum quota of</p> <p>24 one placement a month, four to five interviews a month.</p> <p>25 Q. Okay. Tell me during 2000 -- from September 24,</p>	<p>1 Q. Let's see. I may have a copy of it for us to</p> <p>2 refer to. Yep. Thank you.</p> <p>3 (Exhibit Number 113 marked.)</p> <p>4 Q. (BY MR. VOLNEY) Let me show you 113. So Exhibit</p> <p>5 113 is a copy of Larry Gresham's employment agreement</p> <p>6 with Merritt Hawkins dated March 31st, 2008; do you see</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. And do you have a similar employment agreement to</p> <p>10 this one with Merritt Hawkins?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Do you consider the training that you provide to</p> <p>13 your search consultants to be confidential?</p> <p>14 A. I'm sorry. What was the question again?</p> <p>15 Q. Do you consider the training -- the 20-week</p> <p>16 training program that you provide to your search</p> <p>17 consultants to be confidential?</p> <p>18 A. Through the years of our 25 years of doing this,</p> <p>19 yeah, I would see that to be confidential, yes.</p> <p>20 Q. What's -- what's secret about it?</p> <p>21 A. Just the years of experience, the tenureship that</p> <p>22 we provide and just the industry knowledge that really</p> <p>23 no other company out there has. So yeah, I would see it</p> <p>24 as being confidential.</p> <p>25 Q. Did you yourself go through the search consultant</p>

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<p>1 training?</p> <p>2 A. I did.</p> <p>3 Q. Did, did not?</p> <p>4 A. I did.</p> <p>5 Q. Okay. And you were a search consultant for some</p> <p>6 period of time, right?</p> <p>7 A. I was.</p> <p>8 Q. Okay. So would you consider the training that</p> <p>9 Merritt Hawkins provides to be confidential information</p> <p>10 as that term is used in the employment agreement itself?</p> <p>11 A. I would see it as confidential, yes.</p> <p>12 Q. Okay. What aspects of the Merritt Hawkins</p> <p>13 training are confidential?</p> <p>14 A. Well, I think when you're talking about just the</p> <p>15 information, itself the 44-step system that we have in</p> <p>16 place. The different protocols and mechanisms that --</p> <p>17 that we instill into our employees I would see, as yes,</p> <p>18 confidential. Essentially it is the -- as we kind of</p> <p>19 call it the Bible to recruiting and we'd like to think</p> <p>20 that that is our brand and we do keep it confidential.</p> <p>21 Q. Okay. After you -- after an employee terminates</p> <p>22 his or her employment with Merritt Hawkins, can they</p> <p>23 ever use Merritt Hawkins confidential information from</p> <p>24 that day forward?</p> <p>25 A. Confidential information as far as documents?</p>	<p>1 Q. There's people like Billy Bowden who will wait</p> <p>2 out the one-year noncompete, right?</p> <p>3 A. Correct.</p> <p>4 Q. And then go to work for, for example, Delta?</p> <p>5 A. Correct.</p> <p>6 Q. And at least in your understanding, you don't</p> <p>7 have any problem with that as long as they're otherwise</p> <p>8 abiding by the one-year noncompete, right?</p> <p>9 A. As long as they're abiding by the one-year</p> <p>10 noncompete.</p> <p>11 Q. Okay. I have a question about -- sorry. Let's</p> <p>12 look at -- we're on Exhibit 113 still. Let's look at</p> <p>13 page marked MHA241.</p> <p>14 A. What page is that? I'm sorry.</p> <p>15 Q. Sorry. At the bottom. We're on this one. This</p> <p>16 one right here. You know, forget that. Let's look at</p> <p>17 exhibit -- the complaint.</p> <p>18 A. What's that?</p> <p>19 Q. Exhibit 106 -- 107 and then let's look at page --</p> <p>20 I want to look at page 40 which would be page four of</p> <p>21 the Gresham employment agreement. Now, Mr. Beidle, does</p> <p>22 your employment agreement with Merritt Hawkins have a</p> <p>23 geographical where you're prohibited from working after</p> <p>24 you leave Merritt Hawkins for a period of a year?</p> <p>25 A. Yes, to the best of my knowledge it does. I have</p>
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<p>1 No. They shouldn't, no.</p> <p>2 Q. What about the confidential information that is</p> <p>3 imparted during the training process?</p> <p>4 A. They should not, no.</p> <p>5 Q. Given that you consider the training that Merritt</p> <p>6 Hawkins to be -- that Merritt Hawkins provides is</p> <p>7 confidential information of the agreement, how is it</p> <p>8 that any employee of Merritt Hawkins -- upon terminating</p> <p>9 their employment with Merritt Hawkins, how is it that</p> <p>10 that employment can go work in the recruiting -- the</p> <p>11 medical recruiting industry?</p> <p>12 A. How is it that they can?</p> <p>13 Q. Right.</p> <p>14 A. Well, I think that's why they put -- for one,</p> <p>15 they put the year noncompete, but -- and I know that's</p> <p>16 based on certain radius, but I don't know that there's</p> <p>17 anything that states you can't do physician recruitment</p> <p>18 outside of Merritt Hawkins if you've explored an</p> <p>19 opportunity outside of that radius and I could be wrong.</p> <p>20 I'm not sure.</p> <p>21 Q. Okay. But it -- it you know from your personal</p> <p>22 experience here at Merritt Hawkins over the years that</p> <p>23 occasionally people get tired of Merritt Hawkins and</p> <p>24 then will go work for other medical recruiters, correct?</p> <p>25 A. Correct.</p>	<p>1 not seen it in a long time, but yes.</p> <p>2 Q. Does that geographical territory in effect a</p> <p>3 radius around where we currently are here in Irving?</p> <p>4 A. Correct.</p> <p>5 Q. And so you would be prohibited from working at</p> <p>6 any competing business within a 50-mile radius of</p> <p>7 Merritt Hawkins?</p> <p>8 A. That's correct.</p> <p>9 Q. Now, what's the -- what's the purpose of that?</p> <p>10 A. What is the purpose of --</p> <p>11 Q. The 50-mile radius?</p> <p>12 MS. NOWAK: Objection to the extent it calls</p> <p>13 for a legal conclusion.</p> <p>14 A. We do not want a recruiter or otherwise marketer</p> <p>15 who leaves this company to go to a competing</p> <p>16 organization within a certain radius of where we are</p> <p>17 that is in direct competition with Merritt Hawkins such</p> <p>18 as Consilium or Delta or Fidelus or any others.</p> <p>19 Q. (BY MR. VOLNEY) Does -- does Merritt Hawkins --</p> <p>20 Merritt Hawkins must know who its competitors are within</p> <p>21 a 50-mile radius of the front door over here, at 5001</p> <p>22 Statesman, right?</p> <p>23 A. Yes.</p> <p>24 Q. Why doesn't Merritt Hawkins just give its</p> <p>25 employees a list of the places where they can't work?</p>

28 (Pages 106 to 109)

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<p>1 MS. NOWAK: Objection to the extent it calls</p> <p>2 for a legal conclusion. It's argumentative.</p> <p>3 A. There's always new companies that are -- are</p> <p>4 opening at any given time. It also protects us to where</p> <p>5 someone wouldn't leave here and set up a company across</p> <p>6 the street.</p> <p>7 Q. (BY MR. VOLNEY) Okay. It looks like on page 40</p> <p>8 of exhibit of whatever we're on, 111 -- sorry -- 107,</p> <p>9 that Mr. Gresham actually had a little bit of a</p> <p>10 different restricted territory and his restricted</p> <p>11 territory here at Section 5A is defined as Dallas, Texas</p> <p>12 and all counties adjacent to Dallas County including the</p> <p>13 counties of Collin, Denton, Ellis, Hunt, Johnson,</p> <p>14 Kaufman, Rockwall and Tarrant, right? Do you see that?</p> <p>15 A. I do, yes.</p> <p>16 Q. So he can't -- or he's prohibited from going to</p> <p>17 work at any company that competes with Merritt Hawkins</p> <p>18 in any of those counties for a period of a year?</p> <p>19 A. That's correct.</p> <p>20 Q. And your understanding as the vice president of</p> <p>21 Heartland is that that is to prevent employees from</p> <p>22 going to work at competitors who are located nearby to</p> <p>23 where this office is?</p> <p>24 MS. NOWAK: Objection to the extent it seeks</p> <p>25 a legal conclusion or speculation.</p>	<p>1 from working within 50 miles of their homes?</p> <p>2 A. I'm not sure how that's set up.</p> <p>3 Q. Okay. Is -- do you know if during his year</p> <p>4 previous to his leaving Merritt Hawkins if he identified</p> <p>5 any physician recruits within any of the counties listed</p> <p>6 here on page 4 in Exhibit 107?</p> <p>7 A. After his departing from Merritt Hawkins, did he</p> <p>8 speak with physicians within these counties?</p> <p>9 Q. I'm talking about the year prior to his</p> <p>10 departing. Did he speak to any physicians in those</p> <p>11 counties?</p> <p>12 A. I would imagine, yes.</p> <p>13 Q. Is the purpose of that provision to prevent him</p> <p>14 from speaking with physicians within those counties?</p> <p>15 A. The provisions stated here is to protect Merritt</p> <p>16 Hawkins from an employees to leave and go to a competing</p> <p>17 company within --</p> <p>18 Q. Within --</p> <p>19 A. -- a certain radius.</p> <p>20 Q. Okay. If the employee moved to Hill County,</p> <p>21 could the employee go to work for a Merritt Hawkins</p> <p>22 competitor?</p> <p>23 MS. NOWAK: Objection to the extent it calls</p> <p>24 for a legal conclusion or speculation.</p> <p>25 A. I'm not sure. I don't know the legalities behind</p>
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<p>1 Q. (BY MR. VOLNEY) I just want your understanding</p> <p>2 as the vice president of Heartland.</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. When Mr. Gresham -- actually, I have a</p> <p>5 couple of questions. Question one: Are Dallas, Collin,</p> <p>6 Denton, Ellis, Hunt, Johnson, Kaufman, Rockwall and</p> <p>7 Tarrant, are those within the Heartland?</p> <p>8 A. No, they're not.</p> <p>9 Q. In fact, the entire state of Texas is outside of</p> <p>10 the Heartland as defined by Merritt Hawkins, right?</p> <p>11 A. That's correct.</p> <p>12 Q. Did Mr. Gresham attempt to find physicians for</p> <p>13 any Merritt Hawkins clients located in Dallas, Collin,</p> <p>14 Denton, Ellis, Hunt, Johnson, Kaufman, Rockwall or</p> <p>15 Tarrant County?</p> <p>16 A. Anyone within the Heartland region, is that what</p> <p>17 your question was?</p> <p>18 Q. Right.</p> <p>19 A. No.</p> <p>20 Q. Okay. Would -- does -- does Merritt Hawkins have</p> <p>21 any search consultants who work offsite?</p> <p>22 A. Yes.</p> <p>23 Q. Like from their homes?</p> <p>24 A. Yes.</p> <p>25 Q. Do they have similar provisions preventing them</p>	<p>1 that. I would not be the one to answer that.</p> <p>2 Q. (BY MR. VOLNEY) Do employees ever ask you to</p> <p>3 explain the terms of the employment agreement to them?</p> <p>4 A. With me?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. If an employee asked you could I go to work for X</p> <p>8 company, would you be able to direct them to someone</p> <p>9 within these four walls that could answer that question?</p> <p>10 A. If you're asking if one of my employees came to</p> <p>11 me and asked if it was okay to go and work with</p> <p>12 Consilium, would there be someone that they could go</p> <p>13 speak with and to identify that that was right?</p> <p>14 Q. Right, at least according to Merritt Hawkins.</p> <p>15 A. I would -- yeah, I don't know that that would be</p> <p>16 a question ever asked coming to your supervisor asking</p> <p>17 if I leave is it okay if I work with Consilium. Maybe</p> <p>18 their last day of employment, but I imagine that yes,</p> <p>19 they could go talk to talent acquisition or HR and get</p> <p>20 that information, but I don't know that that question</p> <p>21 has ever been asked or ever will be asked.</p> <p>22 Q. Do you know whether Mr. Gresham used any of</p> <p>23 Merritt Hawkins' confidential -- confidential</p> <p>24 information during the -- approximately 11 months he</p> <p>25 worked for Consilium?</p>

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<p>1 A. I'm not aware of that, no.</p> <p>2 Q. I think I asked you this, but I just want to make</p> <p>3 sure I have it. Do you know any clients that the</p> <p>4 Heartland lost to Consilium because of Mr. Gresham?</p> <p>5 A. I don't know of any, no.</p> <p>6 Q. Do you know whether Mr. Gresham contacted any of</p> <p>7 his Heartland clients, his former Heartland clients</p> <p>8 while he worked for Consilium?</p> <p>9 A. I don't know of any, no.</p> <p>10 Q. Do you know whether he was even operating in the</p> <p>11 same geographical area?</p> <p>12 A. I'm not aware of that.</p> <p>13 Q. Okay. I looked back at some records that the</p> <p>14 company has provided to me and I've determined that</p> <p>15 Gresham's first round at Merritt Hawkins was from</p> <p>16 March 2008 to April 2009, all right?</p> <p>17 A. Okay.</p> <p>18 Q. And then he came back to Merritt Hawkins if we</p> <p>19 look on the first page of this contract on May 17th,</p> <p>20 2010.</p> <p>21 A. Okay.</p> <p>22 Q. So he was gone for a period of about 13 months,</p> <p>23 got that? April 2009 to May 2010?</p> <p>24 A. Okay.</p> <p>25 Q. If Mr. Gresham was working for Arthur Marshall</p>	<p>1 Consilium?</p> <p>2 A. Much smaller.</p> <p>3 Q. How big is Consilium?</p> <p>4 A. I don't know their exact employee number, but I</p> <p>5 would think it is probably around 50 or 60 employees.</p> <p>6 Q. Now, to be fair, this agreement doesn't say you</p> <p>7 can't go to competitors except if they have less than 10</p> <p>8 employees, does it?</p> <p>9 A. That's correct.</p> <p>10 Q. I guess some matter more to Merritt Hawkins?</p> <p>11 A. Well, I don't know that that's the case, no, but</p> <p>12 certainly that are some competitors that play a bigger</p> <p>13 role in the industry than others.</p> <p>14 Q. Did you ever work with Joe Hawkins?</p> <p>15 A. I did.</p> <p>16 Q. You did. For what period of time?</p> <p>17 A. I don't know the exact dates. It was, you know,</p> <p>18 before the merger.</p> <p>19 Q. Did you work with him directly?</p> <p>20 A. No, not directly.</p> <p>21 Q. Let's see. I think I'm almost done. Has there</p> <p>22 been any talk internally among the -- sort of the</p> <p>23 management team about targeting Consilium for lawsuits?</p> <p>24 I'm excluding from that any conversations you might have</p> <p>25 had with lawyers.</p>
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<p>1 during the middle of that time period, was he in</p> <p>2 violation of his noncompete?</p> <p>3 MS. NOWAK: Objection to the extent it calls</p> <p>4 for a legal conclusion or speculation.</p> <p>5 A. Was he in violation of his noncompete with Arthur</p> <p>6 Marshall?</p> <p>7 Q. (BY MR. VOLNEY) No, he's working for Arthur</p> <p>8 Marshall. Of his noncompete with Merritt Hawkins which</p> <p>9 I think is in Exhibit 113?</p> <p>10 A. Right. Is he in violation of his noncompete?</p> <p>11 Q. Would he have been in his violation of his</p> <p>12 noncompete if he was working for Arthur Marshall during,</p> <p>13 for example, July of 2009?</p> <p>14 A. I'd have to say yes.</p> <p>15 Q. If he was in violation of his noncompete, why did</p> <p>16 Merritt Hawkins rehire him?</p> <p>17 A. He was a good employee. I honestly don't know</p> <p>18 that we thought that it was a direct violation of his</p> <p>19 noncompete even though you, I guess, could by the</p> <p>20 language seen it as that but he left for -- for</p> <p>21 different reasons. And quite frankly, we don't really</p> <p>22 see Arthur Marshall as a competitor because they are so</p> <p>23 small in nature. But he left on good terms and was a</p> <p>24 good employee so we made the decision to rehire him.</p> <p>25 Q. Is Arthur Marshall larger or smaller than</p>	<p>1 A. I have not had any of those conversations, no.</p> <p>2 MR. VOLNEY: Okay. That's all the questions</p> <p>3 I have. Thank you.</p> <p>4 MS. NOWAK: I have a few, but it'll just be</p> <p>5 very short.</p> <p>6 EXAMINATION</p> <p>7 BY MS. NOWAK:</p> <p>8 Q. Mr. Beidle, do you maintain any personal files on</p> <p>9 your MHA computer?</p> <p>10 A. I do not.</p> <p>11 Q. Why?</p> <p>12 A. Because again, it's the company policy to have</p> <p>13 personal information on a -- on your desktop or any</p> <p>14 that's part of Merritt Hawkins.</p> <p>15 Q. Are your team members allowed to or are they are</p> <p>16 supposed to maintain personal files on their computer?</p> <p>17 MR. VOLNEY: Objection; leading.</p> <p>18 A. They are not.</p> <p>19 Q. (BY MS. NOWAK) Would it be your expectation that</p> <p>20 they would not maintain personal files on their</p> <p>21 computer?</p> <p>22 MR. VOLNEY: Objection; leading.</p> <p>23 A. It's my expectation that they would not.</p> <p>24 Q. (BY MS. NOWAK) Okay. Since there's been an</p> <p>25 objection lodged, I'm going to ask that question again.</p>

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<p>1 Do you have any expectations regarding whether your</p> <p>2 employees would maintain personal files on their</p> <p>3 computer?</p> <p>4 A. My expectation is that they would not have</p> <p>5 personal files on their computer.</p> <p>6 Q. Are search consultants or senior search</p> <p>7 consultants with MHA permitted to use USB devices or</p> <p>8 drives on their computers?</p> <p>9 A. They are prohibited to use those.</p> <p>10 Q. Mr. Beidle, Mr. Gresham during his deposition</p> <p>11 testified that he often or sometimes e-mailed from his</p> <p>12 business e-mail to his personal e-mail when he was going</p> <p>13 to be traveling for work, that that was a common</p> <p>14 practice and was something that was acceptable, you</p> <p>15 know, within MHA. Do you find that to be reasonable or</p> <p>16 acceptable?</p> <p>17 MR. VOLNEY: Objection; form.</p> <p>18 MS. NOWAK: What's the basis, John?</p> <p>19 MR. VOLNEY: I think it's a silly question.</p> <p>20 MS. NOWAK: Silly question is not an</p> <p>21 objection.</p> <p>22 MR. VOLNEY: It's -- it's an incomplete</p> <p>23 hypothetical. It's asking him for an opinion. He's a</p> <p>24 fact witness. It's vague as to what you mean by</p> <p>25 reasonable.</p>	<p>1 why it is that MHA has a VPN system?</p> <p>2 A. VPN system is set up to where you're on the road</p> <p>3 you can check your e-mails or get into certain</p> <p>4 unrestricted hard drives.</p> <p>5 Q. Does VPN have security features attached to it?</p> <p>6 A. It does.</p> <p>7 Q. What are those security features?</p> <p>8 A. I honestly don't know. I'm sorry.</p> <p>9 Q. Does it require passwords --</p> <p>10 A. Yes. Yes, it does.</p> <p>11 Q. -- and et cetera?</p> <p>12 A. Yeah.</p> <p>13 Q. So is one of the reasons that MHA has it to</p> <p>14 maintain the security of its confidential information?</p> <p>15 A. That's is correct.</p> <p>16 MR. VOLNEY: Objection; leading.</p> <p>17 Q. (BY MS. NOWAK) Mr. Beidle, can you tell us what</p> <p>18 are the reasons that MHA has a VPN system?</p> <p>19 A. To make sure it's protected and that none of that</p> <p>20 information is leaked out.</p> <p>21 Q. Mr. Beidle, John asked you earlier about this</p> <p>22 AMN's systems use policy and one of the things he asked</p> <p>23 you to do was -- or that he alleged was that there was</p> <p>24 no prohibition on using personal e-mail for business.</p> <p>25 Is your understanding -- is there a prohibition on using</p>
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<p>1 Q. (BY MS. NOWAK) Mr. Beidle, I'm going to ask the</p> <p>2 question again. Mr. Gresham testified that he would</p> <p>3 e-mail from his business e-mail to his personal e-mail</p> <p>4 address and that the reason for doing that was because</p> <p>5 he would be traveling for MHA business. Have you ever</p> <p>6 forwarded to yourself from your business e-mail to your</p> <p>7 personal e-mail when you would be traveling for</p> <p>8 business?</p> <p>9 A. No.</p> <p>10 Q. Okay. Why is that?</p> <p>11 A. Well, we have a secured network VPN that we can</p> <p>12 access from the road through either our -- at that time</p> <p>13 we didn't have iPads, but through our laptop and then as</p> <p>14 well when we were given the profile information, we call</p> <p>15 it a white folder, all of the hard documents are in that</p> <p>16 white folder that we would need to conduct the onsite</p> <p>17 profile.</p> <p>18 Q. And Mr. Beidle, I'm going to have you refer back</p> <p>19 to Exhibits 108 and 109. These are two of the documents</p> <p>20 that Mr. Gresham said that he e-mailed to himself so</p> <p>21 that he could conduct MHA business. Would either of</p> <p>22 these two documents been contained in the white folder</p> <p>23 that you're talking about?</p> <p>24 A. Both would've.</p> <p>25 Q. Okay. And can you explain for me a little more</p>	<p>1 personal e-mail for business at MHA?</p> <p>2 A. It is just -- it is understood that in the four</p> <p>3 walls of -- of this company that you do not use company</p> <p>4 devices for personal -- personal reasons.</p> <p>5 Q. Okay.</p> <p>6 A. Including e-mail and --</p> <p>7 MR. VOLNEY: I think you mean personal</p> <p>8 devices for company reasons, but she can fix it.</p> <p>9 Q. (BY MS. NOWAK) Can you look with me at this MIS</p> <p>10 and systems use policy and tell me what is the basis for</p> <p>11 your assertion that employees should not be using</p> <p>12 personal e-mail for business?</p> <p>13 A. It's not conducive to -- towards what we do.</p> <p>14 There's no reason for it. It's not something that we</p> <p>15 condone in the workplace. It's just understood that</p> <p>16 when we're here we're -- it's business related and we're</p> <p>17 not sending out personal documents to personal e-mails</p> <p>18 and also to protect what we have as a company.</p> <p>19 Q. So does MHA actually issue a business e-mail</p> <p>20 address for each of its employees?</p> <p>21 A. Yes.</p> <p>22 Q. So there's no reason -- or is there any reason to</p> <p>23 use a personal e-mail for business?</p> <p>24 A. No, not at all.</p> <p>25 Q. Mr. Gresham has also testified and -- and</p>

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<p>1 admitted to deleting hundreds of files on the day before</p> <p>2 he sent you his resignation e-mail. Is it common</p> <p>3 practice for employees to delete hundreds of files off</p> <p>4 of their computer?</p> <p>5 A. Absolutely not.</p> <p>6 Q. Why would you say that?</p> <p>7 A. It's just -- one, it's -- you shouldn't have</p> <p>8 hundreds of files, I guess, to be deleted. But in most</p> <p>9 instances, it's one against -- I don't know if it's a</p> <p>10 written company policy, but I've never once seen an</p> <p>11 employee come in the day before their resignation and</p> <p>12 access the building and delete hundreds of -- of files.</p> <p>13 Q. So let's talk about that. Was there a difference</p> <p>14 in the way that Mr. Gresham resigned from MHA the first</p> <p>15 time he was employed versus the second?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Can you tell me just a little bit about</p> <p>18 that?</p> <p>19 A. The first time he resigned it was how we would</p> <p>20 see appropriate. He had a letter of resignation. He</p> <p>21 came in face to face. He turned in his badge and -- we</p> <p>22 have a badge to access the building. Then I believe had</p> <p>23 an exit interview. I'm not certain because that's</p> <p>24 something that talent acquisition will -- or HR will</p> <p>25 conduct, but I mean, he went over some files with us and</p>	<p>1 A. Mondays 8:30.</p> <p>2 Q. We talked a little earlier about the employment</p> <p>3 agreement that -- that you or other MHA employees</p> <p>4 signed. Where was Mr. Gresham located when he was</p> <p>5 working for MHA physically? Where was his physical body</p> <p>6 sitting when he was working for MHA?</p> <p>7 A. Downstairs here in the building.</p> <p>8 Q. Okay. And what is the address for this building?</p> <p>9 A. 5001 Statesman Drive.</p> <p>10 Q. And what city is it located?</p> <p>11 A. Irving.</p> <p>12 Q. So when he was performing services for MHA --</p> <p>13 when he was trying to source or -- or find doctors or</p> <p>14 recruit doctors in the Heartland, was he working here in</p> <p>15 Irving, Texas?</p> <p>16 A. Yes.</p> <p>17 Q. And can you tell me where are the competitors of</p> <p>18 MHA located? Where is Delta located; do you know?</p> <p>19 A. I believe they're in Las Colinas, Irving.</p> <p>20 Q. How far away is that from here?</p> <p>21 A. Approximately maybe five miles.</p> <p>22 Q. Okay. What about Fidelus? Where are they</p> <p>23 located?</p> <p>24 A. I believe they're in North Dallas area.</p> <p>25 Q. So approximately how far from here?</p>
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<p>1 -- you know it was handled appropriately.</p> <p>2 Q. So the second time around when Mr. Gresham quit</p> <p>3 he kind of slinked into the building the night before,</p> <p>4 took a bunch of stuff and then sent you an e-mail. He</p> <p>5 never again appeared in the building?</p> <p>6 MR. VOLNEY: Objection; argumentative and</p> <p>7 misstates the record.</p> <p>8 Q. (BY MS. NOWAK) Mr. Beidle, did Mr. Gresham to</p> <p>9 your knowledge come into the building the day prior to</p> <p>10 you receiving his resignation e-mail?</p> <p>11 A. Yes.</p> <p>12 Q. And was that a normal business day that he came</p> <p>13 into the building?</p> <p>14 A. No.</p> <p>15 Q. What day was it?</p> <p>16 A. Sunday, the 23rd.</p> <p>17 Q. And did he ever come into the building again</p> <p>18 after that or did he send you an e-mail to resign?</p> <p>19 A. He came into the building I believe on 24th and</p> <p>20 sent an e-mail at approximately 7 a.m.</p> <p>21 Q. Okay. And did he -- was 7 a.m. prior to MHA's</p> <p>22 usual business hours?</p> <p>23 A. Yes.</p> <p>24 Q. What time does MHA's employees usually show up</p> <p>25 for work?</p>	<p>1 A. Ten, 15 miles.</p> <p>2 Q. Jackson Coker, where are they located?</p> <p>3 A. I believe they're in Atlanta.</p> <p>4 Q. Okay. And --</p> <p>5 A. And I think they may have an office in Denver,</p> <p>6 but I'm not sure exactly of that.</p> <p>7 Q. Okay. And what about Arthur Marshall; where are</p> <p>8 they located?</p> <p>9 A. Irving.</p> <p>10 Q. Okay. And Consilium, do you know where they are</p> <p>11 located?</p> <p>12 A. I believe Las Colinas, Irving.</p> <p>13 MS. NOWAK: John, that's all I have. Do you</p> <p>14 have anything further?</p> <p>15 MR. VOLNEY: No. Thank you.</p> <p>16 MS. NOWAK: Thank you.</p> <p>17 THE VIDEOGRAPHER: Off the record at</p> <p>18 1:35 p.m.</p> <p>19 (Deposition concluded at 1:35 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

32 (Pages 122 to 125)

Tim Beidle

May 16, 2014

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THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MERRITT HAWKINS & )  
ASSOCIATES, LLC, )  
Plaintiff, )

) CIVIL ACTION NO.

VS. ) 13-CV-00312-P

LARRY SCOTT GRESHAM AND )  
BILLY BOWDEN, )  
Defendants. )

REPORTER'S CERTIFICATION  
DEPOSITION OF TIM BEIDLE  
MAY 16, 2014

I, LEI SHERRA TORRENCE, Certified Shorthand  
Reporter in and for the State of Texas, hereby certify  
to the following:

That the witness, TIM BEIDLE, was duly sworn  
by the officer and that the transcript of the oral  
deposition is a true record of the testimony given by  
the witness;

I further certify that pursuant to FRCP Rule  
30 (f) (1) that the signature of the deponent:  
\_\_\_\_\_ was requested by the deponent or a  
party before the completion of the deposition and is to  
be returned within 30 days from date of receipt of the  
transcript. If returned, the attached Changes and

Page 127

Signature Page contains any changes and the reasons  
therefor;

  X   was not requested by the deponent or a  
party before the completion of the deposition.

I further certify that I am neither counsel  
for, related to, nor employed by any of the parties or  
attorneys to the action in which this proceeding was  
taken. Further, I am not a relative or employee of any  
attorney or record in this cause, nor am I financially  
or otherwise interested in the outcome of the action.

Subscribed and sworn to on this the 28th day  
of May, 2014.



Lei Sherra Torrence, CSR  
Texas CSR No. 7836  
Expiration Date: 12/31/2014  
Firm Registration No. 631  
Kim Tindall & Associates, LLC  
645 Lockhill Selma, Suite 200  
San Antonio, Texas 78216  
(210) 697-3400  
(210) 697-3408 (Fax)



33 (Pages 126 to 127)

Kim Tindall and Associates, LLC  
210-697-3400

645 Lockhill Selma, Suite 200

San Antonio, Texas 78216  
210-697-3408

APP. 0070

b1b89364-d730-4811-a71c-bebb8f493c5b

Electronically signed by Lei Sherra Torrence (501-288-335-5388)





## EMPLOYMENT AGREEMENT

between

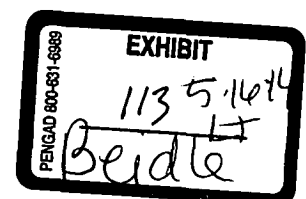
Merritt, Hawkins & Associates

and

Larry Gresham

Search Consultant

March 31, 2008



MHA000238

APP. 0071

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT dated this March 31, 2008, ("Agreement") is entered into by and between Merritt, Hawkins & Associates, a Texas corporation (" "), and Larry Gresham ("Employee").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

### ARTICLE I EMPLOYMENT

hereby agrees to employ the Employee and the Employee hereby accepts such employment and agrees to perform the services specified herein upon the terms and conditions set forth in this Agreement.

### ARTICLE II DUTIES

The Employee shall be employed as a[n] Search Consultant of , effective March 31, 2008. The Employee understands and agrees that his/her primary responsibilities will encompass part or all of the following: recruitment of medical specialists, selling of services to clients, and account management of new and current business either on the permanent or contract side of the business. The Employee agrees to perform the duties normally incidental to that position for as long as he or she shall hold that office and to perform such other duties and responsibilities as may be prescribed from time to time by the Board of Directors of (the "Board"). The Employee also agrees to perform, without additional compensation, such services for corporations or other enterprises affiliated with as the Board may from time to time specify.

### ARTICLE III EXTENT OF SERVICE

a: The Employee shall devote such time, attention and energy to the business of and corporations affiliated with as the Board shall require, and shall not during the term of this Agreement be engaged in any other personal activity if such activity requires the personal services of Employee and is pursued for gain, profit or other pecuniary advantage.

b: The foregoing shall not be construed as preventing the Employee (1) from making investments in businesses of enterprises provided such investments do not require any personal services on the part of the Employee in the operation or the affairs of such businesses or enterprises or (2) participating in any charitable or philanthropic activities.

MHA000239

APP. 0072

#### ARTICLE IV CONFIDENTIAL INFORMATION

a: The Employee will be trained, by , in the capacity of a[n] Search Consultant or and will have access to and develop confidential information relating to the exact names and contacts of clients of , the fees charged by , and sales techniques unique to the success of .

b: In addition, the Employee further acknowledges that the Confidential Information received through training and employment by will enable the Employee to cultivate the loyalty and good will of clients or customers and will enable the Employee to develop close, personal relationships with clients. The Employee agrees that Confidential Information documented in files, records and documents is the property of and agrees that the Employee shall not, without the prior written consent of , disclose or make available to any person, or use directly or indirectly, any of such Confidential Information, except in connection with the performance of the Employee's employment by .

c: This obligation shall not apply to such portion of or its client's information which the Employee can establish: (a) was previously known to the Employee prior to the Employee obtaining the same from or its client or developing the same for 's or its client; (b) was in the public domain prior to the time of disclosure by or its client to Employee or prior to the time such information was developed by Employee for or its client; or (c) was later disclosed to Employee by a third party who did not receive the same, directly or indirectly, from or its client or who had no obligation of secrecy with respect thereto. The Employee further recognizes the need of to protect these legitimate business interests by a covenant not to compete as provided under Article VII.

d: The Employee acknowledges and agrees that this non-disclosure obligation shall survive any termination of this Agreement and shall be fully enforceable by or its successor or assignee subsequent to the termination of the Employee's employment, regardless of the reason for such termination.

e: For purposes of the Agreement, the term "Confidential Information" shall be defined as information in the possession of, prepared by, obtained by, or compiled by which is not generally available to the public. "Confidential Information" shall include, but is not limited to, information pertaining to: (i) the identity of customers, clients and prospects; (ii) the business, finances and special needs of , its customers, clients, contacts and prospects; (iii) policies and procedures; (iv) compensation plans and employee benefits; (v) confidential market studies; (vi) pricing studies, information and analyses; (vii) current and prospective business projections; (viii) business plans and strategies; (ix) financial statements and information; (x) special processes, procedures and services of ; (xi) methods of bidding, bids to customers, clients and prospects and profit margins; and (xii) unique software programs and databases developed by including, but not limited to, all computer disks, slides, files, manuals or other information pertaining to such software programs and databases. The Employee acknowledges and agrees that this information, if disclosed, could place at a competitive advantage.

## ARTICLE V AUTHORSHIP

a: Moreover, if during Employee's employment by , Employee creates any original work of authorship fixed in any tangible medium of expression which is the subject matter of copyright (such as videotapes, written presentations on acquisitions, computer programs, models, manuals, brochures or the like) relating to 's business products, or services, whether such work is created solely by Employee or jointly with others, shall be deemed the author of such work if the work is prepared by Employee in the scope of Employee's employment; or, if the work is not prepared by the Employee within the scope of Employee's employment but is specialty ordered by as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation or as an instructional text, then the work shall be considered to be work made for hire and shall be the author of the work.

b: In the event such work is neither prepared by the Employee within the scope of Employee's employment or is not a work specially ordered and deemed to be a work made for hire, then the Employee hereby agrees to assign, and by these presents, does assign, to all of Employee's worldwide right, title and interest in and to such work and all rights of copyright therein.

c: Both during the period of Employee's employment by and thereafter, Employee agrees to assist and its nominee, at any time, in the protection of worldwide right, title and interest in and to the work and all rights of copyright therein, including but not limited to, the execution of all formal assignment documents requested by or its nominee and the execution of all lawful oaths and publications for registration of copyright in the United States and foreign countries.

## ARTICLE VI TERMINATION OF EMPLOYMENT

In the event that this Agreement is terminated for any reason, the Employee agrees he/she shall, prior to the effective date of termination, return any and all records; files; documents; materials; copies; equipment; literature; data; information; audio or videotapes; slides; computer disks, files or information; software programs; order forms; memoranda; correspondence; customer lists or information; prospect lists or information; financial statements or other information pertaining to its customers clients, contacts or prospects; agreements; contracts; orders; records; policy or procedure manuals; memoranda; and/or any cards or notes acquired, compiled or coming into the Employee's knowledge, possession or control in connection with his/her activities as an employee of , as well as all machines, parts, equipment or other materials received from or from any of its customers, clients, or prospects in connection with such activities.

## ARTICLE VII NON-COMPETITION

MHA000241

APP. 0074

a: The Employee acknowledges and agrees that as an employee and representative of , the Employee will be responsible for building and maintaining business relationships and goodwill with current and future customers, clients and prospects on a personal level. The Employee acknowledges and agrees that this responsibility creates a special relationship of trust and confidence between , the Employee and these persons or entities. The Employee acknowledges and agrees that this special relationship of trust and confidence between , the Employee and current and future customers, clients and prospects creates a high risk and opportunity for the Employee to misappropriate these relationships and goodwill existing between and such persons and entities. The Employee acknowledges and agrees that it is fair and reasonable for MHA to take steps to protect from the risk of such misappropriation.

b: The Employee acknowledges and agrees that he/she has received and will continue to receive substantial, valuable consideration for the agreements set forth in this section including: (i) access to Confidential Information, as defined above; (ii) continued employment; (iii) specialized training and knowledge pertaining to the products, services, business practices, procedures and Confidential Information utilized by ; and (iv) compensation and benefits as described herein. The Employee acknowledges and agrees that this constitutes fair and adequate consideration for the agreements set forth in this section.

c: In consideration for the valuable consideration described above, the Employee acknowledges and agrees as follows:

(1) For a period of twelve (12) months following the termination of this Agreement by either party, for whatever reason, the Employee will not solicit, contact, or communicate with any person, company or business that was a client, customer or prospect of , and that the Employee personally solicited, contacted, communicated with or accepted business from while he/she was an employee of at any time during the twelve (12) months preceding the termination of this Agreement, for the purpose of engaging in the Same or a Similar Business as MHA in the Market Area.

(2) For a period of twelve (12) months following the termination of this Agreement by either party, for whatever reason, the Employee will not engage in the Same or a Similar Business as anywhere in the Market Area, including working as an agent, consultant, partner, employee, officer, shareholder or independent contractor, for any company of business engaged in the Same or a Similar Business as anywhere in the Market Area.

(3) The Employee acknowledges and agrees that these non-competition agreements shall survive any termination of the Agreement and shall be fully enforceable by MHA to its successor assignee subsequent to the termination of the Employee's employment. Regardless of the reason for such termination.

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APP. 0075

(4) In the event that the Employee violates this Section VII, and is required to initiate legal action to secure the Employee's compliance with Section VII, the Employee understands and agrees that, in addition to any other legal or equitable relief to which may be entitled under applicable law, he/she shall be prohibited from violating Section VII of the Agreement for a period of twelve (12) months from the date a final judgment is entered in favor of enforcing Section VII of this Agreement.

d. For purpose of this section, the following definitions shall apply:

(1) The term "Same or a Similar Business as " shall be defined as the business of recruitment of medical specialists, selling of services to clients, and account management of new and current business.

(2) The term "Market Area" shall be defined as any location within fifty (50) miles of the office of to which the Employee is currently assigned. The Employee understands and agrees that shall have the sole discretion to assign the Employee to a different office, or modify the geographic scope of the Employee's sales territory description. In the event that assigns the Employee to a new office, the parties agree that, for the purposes of this section, the "Market Area" shall be modified to include any location within fifty (50) miles of the new office to which the Employee is assigned.

e. The Employee acknowledges and agrees that the Agreements set forth above are ancillary to an otherwise enforceable agreement and supported by independent valuable consideration as required by Tex. Bus. & Comm. Code Ann. ~ 15.50 (or any successor provision). The Employee further acknowledges and agrees that the limitations as to time, geographical area, and scope of, activity to be restrained are reasonable and acceptable to the Employee, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of . The Employee further agrees that if, at some later date, a court of competent jurisdiction determines that these Agreements do not meet criteria set forth in Tex. Bus. & Comm. Code Ann. ~ 15.50 (2) (or any successor provision), these Agreements may be reformed by the court, pursuant to Tex. Bus. & Comm. Code Ann. ~ 15.51 (c) (or any successor provision), and enforces to the maximum extent permitted under Texas law.

#### ARTICLE VIII NON-INTERFERENCE

The Employee agrees that, for a period of thirty-six (36) months subsequent to the termination of this Agreement, whether such termination occurs at the insistence of or the Employee, the Employee shall not solicit or recruit directly or by assisting others, any other employees of , its parent companies, subsidiary companies, affiliated companies, successors or assigns, nor shall the Employee contact or communicate with any other employees of , its parent companies,

MHA000243

APP. 0076

subsidiary companies, affiliated companies, successors or assigns, for the purpose of inducing other employees to terminate their employment with , its parent companies, subsidiary companies, affiliated companies, successors or assigns. For the purposes of this covenant, "other employees" shall refer to employees who are still actively employed by, or doing business with, , or any of its parent companies, subsidiary companies, affiliated companies, successors or assigns, at the time of the attempted recruiting or hiring. The Employee acknowledges and agrees that these non-interference agreement shall survive any termination of the Agreement and shall be fully enforceable by or its successor or assignee subsequent to the termination of the Employee's employment, regardless of the reason of such termination.

#### ARTICLE IX REMEDIES

a. and Employee, jointly and severally, acknowledge that it would be impossible to calculate or ascertain accurately and definitely the damages would sustain from a breach by Employee of the provisions of this Agreement and that no adequate remedy at law exists. Accordingly, in the event of a breach or threatened breach by the Employee of this Agreement, including without limitation breach of Article VII, shall be entitled to an injunction restraining such prohibited activity.

b. Nothing herein, however shall be construed as prohibiting from pursuing concurrently with the above injunction, such other relief as a result of such breach or threatened breach, including the recovery of damages from the Employee.

c. It is agreed that in the event of a breach of this Agreement by Employee it would be impractical or extremely difficult to fix the actual damages and therefore Employee agrees that upon its breach of this Agreement it will pay to as liquidated damages and not as a penalty the sum equal to the standard fee charges to any client for each physician who accepts employment or associates with any person or entity as a result of a breach of this Agreement.

#### ARTICLE IX MISCELLANEOUS

a. The obligations specified in this Agreement shall survive the termination of the employment relationship and are in addition to the obligations otherwise imposed by the law; the expiration of these specific obligations does not terminate the obligations imposed by law.

b. The parties acknowledge and agree that this Agreement may be assigned by to any other person or entity without the consent of the Employee. In the event of any such assignment, the duties and obligations of the Employee, and the rights of (including, but not limited to, the Confidential Information, Non-Competition, Authorship and Non-Interference provisions set forth in this Agreement), shall inure to the benefit of, be fully enforceable by, the assignee. The parties further acknowledge and agree that the Employee's duties; obligations, compensation and benefits are personal to the employee and may not be assigned to any person

or entity without the written consent of MHA. In the event of the Employee's death, this Agreement shall be enforceable by the Employee's estate, executors or legal representatives, but only to the extent that such persons may collect any compensation due to the Employee under this Agreement.

c. The Employee understand and agrees that, with respect to any compensation or benefits required to be paid under this Agreement, is authorized to withhold any amounts from such compensation required by Federal, state or local law.

d. The parties acknowledge and agree that, in the event that either party initiates litigation to enforce any provision of the Agreement, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party its reasonable costs and expenses, including attorneys' fees, incurred in connection with such litigation.

e. The parties acknowledge and agree that each provision of this Agreement shall be enforceable independently of every other provision. Furthermore, the parties acknowledge and agree that, in the event any provision of this Agreement is determined to be unenforceable for any reason the remaining covenants and/or provisions will remain effective, binding and enforceable. The parties further agree that, in the event that any provision of this Agreement is determined to be unenforceable for any reason, the parties agree to substitute a comparable provision dealing with the same subject matter as the unenforceable provision which approximates the effect and intent of the unenforceable provision to the maximum extent permissible under applicable law.

f. The parties acknowledge and agree that the failure of either to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions, of this Agreement

g. The parties acknowledge and agree that this Agreement constitutes the complete and entire agreement between the parties; that the parties have executed this Agreement based upon the express terms and provisions set forth herein; that the parties have not relied on any representations, oral or written, which are not set forth in this Agreement; that all previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. In addition, the parties acknowledge and agree that the provisions of this Agreement may not be modified by any subsequent agreement unless the modifying agreement (i) is in writing; (ii) contains an express provision referencing this Agreement; (iii) is signed by the Employee; and (iv) is signed by the President or CEO or .

h. This Agreement does not alter in any way the fact that Employee's employment relationship with exists only at the will of both and Employee. Either or Employee may terminate the employment relationship at any time for any lawful reason, with or without cause, by the giving of verbal or written notice of termination.

MHA000245

APP. 0078



i This Agreement shall be governed and construed in accordance with the substantive laws of the State of Texas. is based in Irving, Texas, and this Agreement is to be partially performed in Irving, Texas. It is agreed that any and all disputes arising out of this Agreement will be heard and decided in the state or federal courts situated in Dallas County, Texas. Both and Employee hereby appoint the Secretary of State for the State of Texas as its and Employee's agent to receive and accept service of process in connection with any and all such litigation.

Merritt, Hawkins & Associates

By: 

Robert Colmery  
Divisional Vice President

Date: 3-24-08

EMPLOYEE: 

Larry Gresham

Date: 3-30-08

MHA000246

APP. 0079

Billy Jess Bowden

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MERRITT HAWKINS	)	
& ASSOCIATES, LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 3:13-cv-00312-P
LARRY SCOTT GRESHAM	)	
AND BILLY BOWDEN	)	
	)	
Defendants.	)	

\*\*\*\*\*  
ORAL AND VIDEOTAPED DEPOSITION OF  
BILLY JESS BOWDEN  
FEBRUARY 4, 2014  
\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION of  
BILLY JESS BOWDEN, produced as a witness at the instance  
of the Plaintiff, and duly sworn, was taken in the  
above-styled and numbered cause on the 4th of February,  
2014, from 10:06 a.m. to 2:05 p.m., before Lezley Cull,  
CSR in and for the State of Texas, reported by machine  
shorthand, at the offices of Lynn Tillotson Pinker &  
Cox, LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas,  
pursuant to the Texas Rules of Civil Procedure and the  
provisions stated on the record or attached hereto.

Billy Jess Bowden

		<b>2</b>		<b>4</b>
10:05	1	A P P E A R A N C E S	1	P R O C E E D I N G S
10:05	2		2	(Exhibit Nos. 1-2 marked before going on record.)
10:06	3	FOR THE PLAINTIFF:	3	THE VIDEOGRAPHER: We are now on the
10:06	4	Ms. Christine A. Nowak	4	record for the video deposition of Billy Bowden. The
10:06	5	DYKEMA GOSSETT PLLC	5	time is 10:06 a.m. on February 4th, 2014 in the matter
10:06	6	1717 Main Street	6	of Merritt Hawkins & Associates, LLC versus
10:07	7	Suite 4000	7	Larry Scott Gresham, et al., Civil Action
10:07	8	Dallas, Texas 75201	8	No. 3:13-CV-00312-P, being held in the United States
10:07	9	214.462.6400	9	District Court for the Northern District of Texas,
10:07	10	214.462.6401 (fax)	10	Dallas Division.
10:07	11	cnowak@dykema.com	11	The court reporter is Lezley Cull and the
10:07	12	FOR THE DEFENDANTS:	12	videographer is Kevin Bray. Both are representatives of
10:07	13	Mr. John Volney	13	DepoTexas. Today's deposition is held at Lynn Tillotson
10:07	14	LYNN TILLOTSON PINKER COX	14	Pinker Cox, LLC.
10:07	15	2100 Ross Avenue	15	Will counsel please state their
10:07	16	Suite 2700	16	appearances for the record.
10:07	17	Dallas, Texas 75201	17	MS. NOWAK: Christine Nowak, counsel for
10:07	18	214.981.3822	18	plaintiff Merritt Hawkins & Associates.
10:07	19	214.891.3839 (fax)	19	MR. VOLNEY: John Volney for the
10:07	20	jvolney@lynnllp.com	20	defendants.
10:07	21	ALSO PRESENT:	21	THE VIDEOGRAPHER: Will the court
10:07	22	Kevin Bray - Videographer	22	reporter please administer the oath.
10:07	23		23	BILLY JESS BOWDEN,
10:07	24		24	having been first duly sworn, testified as follows:
10:07	25		25	
		<b>3</b>		<b>5</b>
10:07	1	I N D E X	1	E X A M I N A T I O N
10:07	2	Appearances. .... 2	2	BY MS. NOWAK:
10:07	3		3	Q. Good morning, Mr. Bowden.
10:07	4	BILLY JESS BOWDEN	4	<b>A. Good morning.</b>
10:07	5	Examination by Ms. Nowak. .... 5	5	Q. Can you please state your full name for the
10:07	6	DEPOSITION EXHIBITS PAGE	6	record.
10:07	7	Exhibit 1 - Notice of Deposition. .... 6	7	<b>A. Billy Jess Bowden.</b>
10:07	8	Exhibit 2 - Defendant Billy Bowden's	8	Q. And your current residence, please.
10:08	9	Responses To Plaintiff's	9	<b>A. 11512 Jasper, Frisco, Texas 75035.</b>
10:08	10	First Request For Production. ... 14	10	Q. And can I also have a current phone number.
10:08	11	Exhibit 3 - Document printed from	11	<b>A. 972-697-6355.</b>
10:08	12	Consilium Staffing website. .... 34	12	Q. And do you have any current e-mail addresses?
10:08	13	Exhibit 4 - Employment Agreement. .... 43	13	<b>A. I do. Billy -- it's my name,</b>
10:08	14	Exhibit 5 - BOWDEN 000065 - BOWDEN 000066. ... 53	14	<b>billyjbowden@gmail.com.</b>
10:08	15	Exhibit 6 - BOWDEN 000016 - BOWDEN 000017. ... 70	15	Q. And do you have any other e-mail addresses at
10:08	16	Exhibit 7 - BOWDEN 000020 - BOWDEN 000022. ... 72	16	this time?
10:08	17	Exhibit 8 - BOWDEN 000027 - BOWDEN 000029. ... 74	17	<b>A. I have my work e-mail.</b>
10:08	18	Exhibit 9 - BOWDEN 000056. .... 82	18	Q. Can you please state that --
10:08	19	Exhibit 10 - Photocopy of a text	19	<b>A. Sure.</b>
10:08	20	message string. .... 88	20	Q. -- for the record.
10:08	21	Exhibit 11 - GRESHAM 000001. .... 97	21	<b>A. It's bbowden@consiliumstaffing.com.</b>
10:08	22	Exhibit 12 - 9-24-12 resignation e-mail	22	Q. Okay. And Mr. Bowden, you understand you're
10:08	23	from Scott Gresham to	23	here for a deposition today in a lawsuit filed by
10:08	24	Tim Beidle. .... 103	24	Merritt Hawkins & Associates?
10:08	25	Exhibit 13 - Defendant Billy Bowden's	25	<b>A. I do.</b>
		Responses To Plaintiff's		
		First Set of Interrogatories. ... 106		
		Exhibit 14 - Application for Employment. ... 123		
		Exhibit 15 - CV of Billy Bowden. .... 132		

2 (Pages 2 to 5)

3 (Pages 6 to 9)

Billy Jess Bowden

	10		12
10:13	1	<b>A. I've met --</b>	1 <b>That was it.</b>
10:13	2	Q. -- me here today?	2 Q. And your team, you mentioned that you told
10:13	3	<b>A. -- with Mr. Volney and I've met with</b>	3 them you were going to be out of the office. Did you
10:13	4	<b>Mr. Tillotson.</b>	4 speak with them about anything else related to your
10:13	5	Q. Is there anyone else that you've met with or	5 deposition?
10:13	6	spoken to about your deposition today?	6 <b>A. That I was being deposed.</b>
10:13	7	<b>A. As far as attorneys, not the deposition, no.</b>	7 Q. Did any of them offer any comments or
10:14	8	Q. Okay. Outside of attorneys, is there anyone	8 questions related to the fact --
10:14	9	else that you've spoken to about your deposition today?	9 <b>A. No.</b>
10:14	10	<b>A. People I work with, my --</b>	10 Q. -- that you were being deposed?
10:14	11	Q. Okay. And who have you spoken with that you	11 <b>A. No.</b>
10:14	12	work with?	12 Q. Is there anyone else besides your lawyer,
10:14	13	<b>A. Our executive vice president, Matt Baade.</b>	13 Mr. Baade, Ms. DeGraauw, and your team that you've
10:14	14	Q. Okay.	14 spoken with about this deposition or in preparation for
10:14	15	<b>A. Our CFO, Monique DeGraauw.</b>	15 this deposition?
10:14	16	Q. Anyone else?	16 <b>A. Scott Gresham.</b>
10:14	17	<b>A. The team I work with. I was going to be out</b>	17 Q. Okay. When did you speak with Mr. Gresham?
10:14	18	<b>of the office, so they needed to know where I was.</b>	18 <b>A. Just texts in the last couple of months saying</b>
10:14	19	Q. And when did you speak with Matt Baade about	19 <b>when are you being deposed, things like that.</b>
10:14	20	your deposition?	20 Q. How many texts have you exchanged with
10:14	21	<b>A. It's been an ongoing process. It's been many</b>	21 Mr. Gresham in the last few months?
10:14	22	<b>times in the last few weeks.</b>	22 <b>A. Probably six to eight.</b>
10:14	23	Q. And what was the substance of your	23 Q. And can you walk me through, what was the
10:14	24	conversations with Mr. Baade?	24 substance of those six to eight texts?
10:14	25	MR. VOLNEY: Hold on.	25 <b>A. Well, most of the times, have you heard</b>
	11		13
10:14	1	Matt's a lawyer is my understanding.	1 <b>anything on the lawsuit? No. Have you? Hey, I heard</b>
10:14	2	MS. NOWAK: Is he representing Mr. Bowden	2 <b>we're getting deposed. When are -- when are you</b>
10:14	3	in connection with this dispute?	3 <b>supposed to do it? And he said next week sometime. And</b>
10:14	4	MR. VOLNEY: He's a lawyer for the	4 <b>that was it.</b>
10:14	5	company, Consilium Staffing. So I think any of his	5 Q. Okay. So other than discussing the date that
10:14	6	conversations with Mr. Baade potentially fall under	6 your deposition would be set and/or whether or not it
10:15	7	attorney/client privilege.	7 had happened, was there any other discussions between
10:15	8	And I would instruct the witness on that	8 you and Mr. Gresham related to your deposition?
10:15	9	basis not to answer.	9 <b>A. No.</b>
10:15	10	Q. (BY MS. NOWAK) During the conversations that	10 Q. Since Mr. Gresham has left Consilium, though,
10:15	11	you had with Mr. Baade, was he providing you legal	11 you have maintained contact with him?
10:15	12	advice in connection with this litigation?	12 <b>A. Very little. Those -- those texts were --</b>
10:15	13	<b>A. Not really, no.</b>	13 <b>were about it.</b>
10:15	14	Q. Was he providing you with any legal advice or	14 Q. Did you review any documents in connection
10:15	15	legal positions that Consilium is taking with respect to	15 with preparing for this deposition?
10:15	16	this litigation?	16 <b>A. I did.</b>
10:15	17	<b>A. No.</b>	17 Q. Can you tell me what documents you reviewed.
10:15	18	Q. Are you going to follow your counsel's	18 <b>A. I'm sorry. I don't remember the names of</b>
10:15	19	instruction not to answer my questions regarding the	19 <b>them, but there's -- there's been many. I know the one</b>
10:15	20	conversations you had with Mr. Baade?	20 <b>with all the exhibits, the different exhibits, the</b>
10:15	21	<b>A. Yes.</b>	21 <b>actual --</b>
10:15	22	Q. You mentioned that you've also spoken with	22 Q. So the complaint that was filed?
10:15	23	Ms. Monique DeGraauw. What was the substance of your	23 <b>A. The complaint, the different questions on the</b>
10:15	24	communications with Ms. Monique DeGraauw?	24 <b>complaint.</b>
10:15	25	<b>A. It was just very, hey, good luck tomorrow.</b>	25 Q. Did you review a copy, then, of your

10:18 1 to gather documents?

10:18 2 **A. Well, I went through -- I have, like, drawers**

10:19 3 **with paperwork and stuff like that that I've kept**

10:19 4 **through my -- my jobs throughout the years. And I went**

10:19 5 **through that and looked for anything I could find.**

10:19 6 **Q. Did you go through your e-mail addresses?**

10:19 7 **A. Yeah, I did -- I did do a search on that, but**

10:19 8 **didn't find anything.**

10:19 9 **Q. So just to confirm, you reviewed e-mails**

10:19 10 **containing your personal e-mail address and also your**

10:19 11 **work e-mail address?**

10:19 12 **A. Correct.**

10:19 13 **Q. Did you go through your phone to make sure**

10:19 14 **that all text messages had been produced?**

10:19 15 **A. Yeah. I had a new phone, so there wouldn't be**

10:19 16 **anything -- any old text messages on there.**

10:20 17 **Q. What about social media, LinkedIn profiles,**

10:20 18 **did you look at any of those types of things?**

10:20 19 **A. I did. I have a lot of connections from --**

10:20 20 **from Merritt Hawkins and Staff Care on there, but I**

10:20 21 **didn't...**

10:20 22 **Q. When did you get a new phone?**

10:20 23 **A. Like every six months.**

10:20 24 **Q. So when's the most recent time that you got a**

10:20 25 **new phone?**

16

1 A. Last week.

2 Q. And prior to that?

3 A. Last year, probably around August.

4 Q. Just a big tech guy?

5 A. No. I broke that phone. But I do like tech,

6 yeah.

7 Q. Do you still have a copy of the resume that

8 you provided to Consilium in connection with your

9 application for employment?

10 A. Probably, yeah.

11 Q. Do you still have a copy of the assessment

12 that you submitted for Consilium in connection with your

13 employment?

14 A. They probably have a copy of that.

15 Q. What about your application for employment?

16 A. I have a blank one possibly. And possibly it

17 may still be in my e-mail, something that I had filled

18 out and scanned back, yes.

19 Q. What about your acceptance of employment with

20 Consilium, the document by which you accepted --

21 A. That's in my e-mail.

22 Q. What about any notes you took in connection

23 with your interviews at Consilium?

24 A. No.

25 Q. So just to recap, we were talking about the

1 resume, assessment, application and acceptance you  
2 submitted to Consilium. And your representation here  
3 today is that you do believe you have copies of those  
4 documents?

5 **A. (Witness nods head.)**

6 Q. Why were those documents not produced to me,  
7 then?

8 **A. Because I didn't think they had -- they**  
9 **weren't -- you didn't ask for them.**

10 Q. So it's your position here today that the  
11 documents that you submitted to Consilium in connection  
12 with your becoming employed by them were not requested  
13 in this lawsuit?

14 MR. VOLNEY: Well, hold on.

15 We produced his communications with  
16 Ms. Stephens and the e-mail communications he had with  
17 her, which were in the documents that were produced to  
18 you back in December.

19 MS. NOWAK: The documents, though, that  
20 are referenced in the e-mails with Ms. Stephens, so the  
21 resume that he submitted, the completed application, the  
22 documents that are -- you know, that states that he is  
23 submitting to Ms. Stephens, they were not included in  
24 the production. So I'm trying to determine, to  
25 ascertain does he still hold copies of those. And if

**6 (Pages 18 to 21)**

Billy Jess Bowden

	<b>22</b>		<b>24</b>
10:26	1 <b>A. Andress High School.</b>	1	blog, do you have a LinkedIn profile?
10:26	2 THE REPORTER: I'm sorry?	2	<b>A. I have a LinkedIn and I have a Facebook.</b>
10:26	3 THE WITNESS: Andress High School,	3	Q. Any other social media?
10:26	4 El Paso, Texas.	4	<b>A. Not that I know of. I might have signed up</b>
10:26	5 Q. (BY MS. NOWAK) And when did you graduate from	5	<b>for Twitter at some point.</b>
10:26	6 high school?	6	Q. I don't even know how to use that.
10:26	7 <b>A. 1994.</b>	7	<b>A. I don't either.</b>
10:26	8 Q. And after graduating from high school, what	8	Q. All right. So if you graduated from high
10:26	9 did you do?	9	school in 1994 and then you went to McMurry, what year
10:27	10 <b>A. I attended McMurry University.</b>	10	did you leave McMurry?
10:27	11 Q. And where is McMurry?	11	<b>A. 1996 or '97.</b>
10:27	12 <b>A. Abilene, Texas.</b>	12	Q. Okay. And then when did you leave UTEP?
10:27	13 Q. And did you graduate from McMurry?	13	<b>A. 1998.</b>
10:27	14 <b>A. I did not.</b>	14	Q. Okay. And then after that, you went to work
10:27	15 Q. What did you do after you left McMurry?	15	for Circuit City?
10:27	16 <b>A. I transferred to UTEP.</b>	16	<b>A. I had been working for Circuit City part time.</b>
10:27	17 Q. And where is UTEP?	17	<b>I just stayed on with them.</b>
10:27	18 <b>A. El Paso.</b>	18	Q. Okay. And how long did you stay on with
10:27	19 Q. And did you graduate from --	19	Circuit City?
10:27	20 <b>A. No.</b>	20	<b>A. Through 2002, I believe.</b>
10:27	21 Q. -- UTEP?	21	Q. Okay. And after you left Circuit City, where
10:27	22 <b>A. No, I didn't graduate.</b>	22	did you go?
10:27	23 Q. What did you do after leaving UTEP?	23	<b>A. I went to Amerquest Mortgage.</b>
10:28	24 <b>A. I went to work for Circuit City.</b>	24	THE REPORTER: American?
10:28	25 Q. Did you ever return to school?	25	THE WITNESS: Amerquest.
	<b>23</b>		<b>25</b>
10:28	1 <b>A. No.</b>	1	Q. (BY MS. NOWAK) And how long did you stay with
10:28	2 Q. So do you have a college degree?	2	Amerquest?
10:28	3 <b>A. No.</b>	3	<b>A. A couple of years.</b>
10:28	4 Q. Did you also ever attend New Mexico State	4	Q. Can you give me a rough estimate of when you
10:28	5 University?	5	think you departed from there.
10:28	6 <b>A. No.</b>	6	<b>A. '95, '96 -- no, no. I'm sorry. '05, '06</b>
10:28	7 Q. So other than your graduation from Andress	7	<b>possibly.</b>
10:28	8 High School and your attendance at McMurry and UTEP	8	Q. Okay.
10:28	9 which did not result in a degree, have we covered your	9	<b>A. Maybe earlier than that.</b>
10:28	10 educational background?	10	Q. And where did you go from Amerquest Mortgage?
10:28	11 <b>A. I did some community college.</b>	11	<b>A. Wells Fargo.</b>
10:28	12 Q. Okay. And where did you do that?	12	Q. And how long did you stay with Wells Fargo?
10:28	13 <b>A. El Paso.</b>	13	<b>A. Just a little while. Maybe a few months,</b>
10:28	14 Q. And did that result in any type of degree?	14	<b>maybe a year.</b>
10:28	15 <b>A. No.</b>	15	Q. So still in the 2006 time frame?
10:28	16 Q. Do you have any licenses or any types of	16	<b>A. Around there.</b>
10:28	17 professional associations?	17	Q. And then from Wells Fargo?
10:28	18 <b>A. No. I have an insurance license, but it's</b>	18	<b>A. I started my own mortgage -- well, it was kind</b>
10:28	19 <b>probably expired.</b>	19	<b>of like a franchise. I was a branch manager/owner of a</b>
10:28	20 Q. Any other special certificates?	20	<b>couple of -- it was called Supreme Lending at one point,</b>
10:28	21 <b>A. No, ma'am.</b>	21	<b>it was called LMI Funding at another. Just different</b>
10:28	22 Q. Do you maintain any websites, Mr. Bowden, any	22	<b>names 'til I went to Merritt Hawkins.</b>
10:28	23 websites that --	23	Q. And so can you tell me the time frame that you
10:28	24 <b>A. I don't understand that.</b>	24	were with LMI Funding.
10:28	25 Q. Do you have a personal website, do you have a	25	<b>A. Between the time I was at Wells Fargo and</b>

7 (Pages 22 to 25)



Billy Jess Bowden

	26		28	
10:29	1	<b>Merritt Hawkins.</b>	1	<b>A. No. Well, it's sales.</b>
10:29	2	Q. So roughly 2006 to 2008?	2	Q. But nothing to do with placing doctors,
10:29	3	<b>A. Roughly.</b>	3	recruiting doctors or physicians?
10:29	4	Q. And then in 2008, you joined Merritt Hawkins?	4	<b>A. It's sales. It's all sales, but not medical,</b>
10:29	5	<b>A. Uh-huh, correct.</b>	5	<b>no, not the medical side. But it is selling.</b>
10:29	6	Q. And where did you go when you departed	6	Q. What was your title with MHA?
10:29	7	Merritt Hawkins?	7	<b>A. I don't know the official title. I don't</b>
10:29	8	<b>A. I went into the insurance field. I worked for</b>	8	<b>remember. But I was a recruiter.</b>
10:29	9	<b>a company called American General. And that was 2010</b>	9	Q. And before you went to work for MHA, you had
10:29	10	<b>and all of 2011.</b>	10	no prior experience in doing medical recruiting?
10:29	11	Q. Other than American General, did you work for	11	<b>A. Right.</b>
10:29	12	anyone else prior to joining Consilium?	12	Q. So it's fair to say that when you arrived at
10:29	13	<b>A. Yes. I worked for a company called Design</b>	13	MHA, you had no background, no experience, no expertise
10:29	14	<b>Benefit Plans.</b>	14	in performing healthcare recruiting?
10:29	15	Q. And when did you work for them?	15	<b>A. Recruiting, correct.</b>
10:29	16	<b>A. For two months in 2012 -- I'm sorry -- 2011.</b>	16	Q. And MHA trained you?
10:30	17	Q. And then after that?	17	<b>A. To be a recruiter, uh-huh.</b>
10:30	18	<b>A. I started at Martin Fletcher on January 2nd of</b>	18	Q. Did MHA onboard you?
10:30	19	<b>2012 -- or January 3rd, whatever that Monday was.</b>	19	<b>A. They have an onboard process, correct.</b>
10:30	20	Q. And then from Martin Fletcher?	20	Q. What does that term or what does that phrase
10:30	21	<b>A. I was there until August or -- yeah, the</b>	21	mean to you?
10:30	22	<b>beginning of August of -- or from January 'til August of</b>	22	<b>A. It was a training program they had that lasted</b>
10:30	23	<b>2012. And then I went to Consilium.</b>	23	<b>anywhere from three months to six months depending on</b>
10:30	24	Q. So have we now covered all of your employment	24	<b>your performance.</b>
10:30	25	history from the time of leaving college up until	25	Q. And how long did your onboarding last?
	27		29	
10:30	1	present that you can recall?	1	<b>A. I want to say probably around five or six</b>
10:30	2	<b>A. That I can recall.</b>	2	<b>months.</b>
10:30	3	Q. Okay. Let's talk about these.	3	Q. That sounds like a fairly intensive training
10:34	4	What was your title with Circuit City?	4	program.
10:34	5	<b>A. I was a salesperson, then I was an operations</b>	5	MR. VOLNEY: Objection; form.
10:34	6	<b>manager, then I was a sales manager.</b>	6	Q. (BY MS. NOWAK) How would you characterize the
10:34	7	Q. And --	7	training program?
10:34	8	<b>A. I was a store director in training, as well.</b>	8	<b>A. It was -- it was good.</b>
10:34	9	Q. What about Ameriquest Mortgage, what was your	9	Q. Now, after you left MHA, you went to work for
10:34	10	title with Ameriquest?	10	American General?
10:34	11	<b>A. I don't know -- I don't remember what the</b>	11	<b>A. Correct.</b>
10:34	12	<b>official title was, but I was a loan officer basically.</b>	12	Q. And what was the nature -- or sorry.
10:34	13	Q. And Wells Fargo?	13	What was your title or position with American
10:34	14	<b>A. I was a loan officer, slash -- I had a little</b>	14	General?
10:34	15	<b>team under me.</b>	15	<b>A. I started off as a life insurance salesman,</b>
10:34	16	Q. Why did you only stay with Wells Fargo for a	16	<b>and then I became a -- what's it called -- a branch</b>
10:34	17	few months?	17	<b>manager in training, I guess.</b>
10:34	18	<b>A. I couldn't make any money there.</b>	18	Q. Were you doing anything with them related to
10:34	19	Q. And then LMI Funding, what was your title with	19	healthcare or physician staffing?
10:34	20	LMI Funding?	20	<b>A. I was recruiting.</b>
10:34	21	<b>A. I was like the branch manager/franchise owner,</b>	21	Q. But specifically, were you recruiting --
10:34	22	<b>I guess.</b>	22	<b>A. No.</b>
10:34	23	Q. Did any of Circuit City, Ameriquest, Wells	23	Q. -- medical specialists?
10:34	24	Fargo, or LMI Funding have anything to do with	24	<b>A. No. I was recruiting life -- life insurance</b>
10:34	25	healthcare recruiting?	25	<b>salesmen.</b>

8 (Pages 26 to 29)

10:38 1 A. I do.

10:38 2 Q. And that they are actually a direct competitor

10:38 3 of MHA?

10:38 4 A. Part of them are.

10:38 5 Q. Where are Martin Fletcher's offices located?

10:38 6 A. It was in Las Colinas. I don't know where

10:38 7 they are now.

10:38 8 Q. So at the time you went to work for them, they

10:38 9 were located in Las Colinas?

10:38 10 A. Yes.

10:38 11 Q. How far was that from MHA's offices?

10:38 12 A. I don't know. Six miles, five miles.

10:38 13 Q. How did you become aware of the employment

10:38 14 opportunity at Martin Fletcher?

10:38 15 A. A recruiter called me.

10:38 16 Q. Was it a cold call?

10:38 17 A. It was a cold call.

10:38 18 Q. Had she heard that you were looking for

10:38 19 employment?

10:38 20 A. I wasn't looking. I -- in fact, I didn't want

10:38 21 to get back into medical staffing.

10:38 22 Q. And why is that?

10:38 23 A. I just didn't -- I didn't like what I -- what

10:39 24 I did at Merritt Hawkins.

10:39 25 Q. They offered you a good deal, though?

1 Martin Fletcher, did you tell them that you had an  
2 employment agreement with Merritt Hawkins?  
3 **A. At that point, I believe it was already**  
4 **expired, my one-year noncompete.**  
5 Q. Did you tell them --  
6 THE REPORTER: One-year what, noncompete?  
7 THE WITNESS: I had a one-year  
8 noncompete.  
9 **A. I don't remember if I specifically told them,**  
10 **but I think they -- they probably had an idea that --**  
11 **that -- they knew I worked at Merritt Hawkins, that I**  
12 **had a noncompete at some point, I'm sure.**  
13 Q. (BY MS. NOWAK) Because every employee at  
14 Merritt Hawkins has a noncompete at some point in time?  
15 **A. As far as I know, yes. I don't know if they**  
16 **still do.**  
17 Q. And Merritt -- I'm sorry.  
18 Martin Fletcher hired you anyway. So they --  
19 you believe they knew that you had an employment  
20 agreement with Merritt Hawkins?  
21 **A. Well, it was already over. I would -- I**  
22 **waited a year and the noncompete part of it was over.**  
23 Q. But there were other terms that were still in  
24 existence, correct?  
25 **A. I believe there was a three-year nonsolicit.**

**10 (Pages 34 to 37)**

**11 (Pages 38 to 41)**

Billy Jess Bowden

	<b>42</b>		<b>44</b>
10:48	1 they were good at?	1	Q. (BY MS. NOWAK) Mr. Bowden, can you take a
10:48	2 <b>A. Sure.</b>	2	minute just to look that over.
10:48	3 Q. Their strengths and weaknesses?	3	<b>A. (Witness complies.)</b>
10:48	4 <b>A. Uh-huh.</b>	4	<b>Okay.</b>
10:48	5 Q. Did you get a feel for who were the top or	5	Q. Mr. Bowden, you're aware that in part, this
10:49	6 high performers versus who were the low performers?	6	lawsuit centers around your employment agreement with
10:49	7 <b>A. I did.</b>	7	Merritt Hawkins & Associates?
10:49	8 Q. And you learned that information while you	8	MR. VOLNEY: Objection; form.
10:49	9 were employed at MHA?	9	Q. (BY MS. NOWAK) Mr. Bowden, do you understand
10:49	10 <b>A. Yes.</b>	10	that in part, this lawsuit centers around your
10:49	11 Q. What date did your employment with MHA	11	employment agreement with Merritt Hawkins?
10:49	12 terminate?	12	MR. VOLNEY: Objection; form.
10:49	13 <b>A. September of 2011.</b>	13	Q. (BY MS. NOWAK) You can still answer the
10:49	14 Q. 2011?	14	question.
10:49	15 <b>A. Was it -- yes -- no. I'm sorry. 2010.</b>	15	<b>A. Sure.</b>
10:49	16 Q. And again, just to make sure that I've got it	16	Q. Do you recall that in connection with your
10:49	17 down correctly, you went from there to American General?	17	employment at Merritt Hawkins, that you signed an
10:49	18 <b>A. American General was my next company, yes.</b>	18	employment agreement?
10:49	19 Q. And after approximately a year elapsed, you	19	<b>A. Yes.</b>
10:49	20 wound up at Martin Fletcher?	20	Q. And the exhibit that you have just reviewed
10:49	21 <b>A. Yes.</b>	21	and that's sitting in front of you, is that a copy of
10:49	22 Q. I asked you earlier if you had advised Martin	22	the employment agreement that you signed with
10:49	23 Fletcher that you had an employment agreement.	23	Merritt Hawkins?
10:50	24 Did you ever advise Consilium that you had an	24	<b>A. It is.</b>
10:50	25 employment agreement with MHA?	25	Q. Okay. And can you tell me on what date you
	<b>43</b>		<b>45</b>
10:50	1 <b>A. Probably not, no.</b>	1	signed this employment agreement?
10:50	2 Q. Was it ever a topic of discussion when you	2	<b>A. April 23rd of 2008.</b>
10:50	3 were interviewing at Consilium that you had worked at	3	Q. And at the time you signed this, you signed it
10:50	4 MHA?	4	of your own free will?
10:50	5 <b>A. Yes.</b>	5	<b>A. I did.</b>
10:50	6 Q. So they were aware that you'd previously been	6	Q. You were not under any type of duress?
10:50	7 employed by MHA?	7	<b>A. Well, if I wanted the job, I had to sign it.</b>
10:50	8 <b>A. Yes.</b>	8	Q. But no one coerced you, no one held your pen
10:50	9 Q. And during the course of that discussion, it	9	to the paper and said you must sign this?
10:50	10 never came up on whether you had an employment agreement	10	<b>A. No. No one held my pen to the paper, no.</b>
10:50	11 or not?	11	Q. And this is your signature on the last page of
10:50	12 <b>A. I don't recall.</b>	12	this agreement?
10:50	13 Q. Were you under the impression that because you	13	<b>A. Yes, it is.</b>
10:50	14 had previously worked at MHA, they were aware you had an	14	Q. And you've signed contracts before?
10:50	15 employment agreement?	15	<b>A. I have.</b>
10:50	16 <b>A. Yes.</b>	16	Q. In fact, having experience with the mortgage
10:53	17 MS. NOWAK: Lezley, can you mark this as	17	industry, you're familiar with the import of signing
10:53	18 our next exhibit.	18	contracts?
10:53	19 THE REPORTER: Uh-huh.	19	<b>A. I am.</b>
10:53	20 MS. NOWAK: And John, I did bring a copy	20	Q. And you agreed to be bound by the terms of
10:53	21 and this is for you.	21	this employment agreement at the time that you signed
10:53	22 MR. VOLNEY: Thank you.	22	it?
10:53	23 MS. NOWAK: Just because I'm so kind and	23	<b>A. I did.</b>
10:53	24 wonderful.	24	Q. And at the time you signed it, you fully
10:53	25 (Exhibit No. 4 marked.)	25	intended to be bound by it?

12 (Pages 42 to 45)

Billy Jess Bowden

	<b>46</b>		<b>48</b>
10:53	1 <b>A. I did.</b>	1	it?
10:53	2 Q. And you understood the full impact and effect	2	<b>A. No.</b>
10:53	3 of signing this employment agreement?	3	Q. You had to be issued a password?
10:53	4 <b>A. I did.</b>	4	<b>A. Yes.</b>
10:53	5 MR. VOLNEY: Objection; form.	5	Q. There were protections in place?
10:53	6 Q. (BY MS. NOWAK) Mr. Bowden, at the time that	6	<b>A. Uh-huh, yes.</b>
10:53	7 you signed this employment agreement, you agreed that	7	Q. Now, you would also agree under this
10:53	8 the restrictions in here were necessary to protect MHA?	8	definition of confidential information, that MHA
10:53	9 <b>A. I don't know that I agreed with it, but I did</b>	9	considers the fees that MHA charges to its clients to be
10:53	10 <b>sign it, so...</b>	10	confidential?
10:53	11 Q. You understood that MHA was putting these	11	<b>A. Yes.</b>
10:53	12 restrictions in place to protect itself?	12	Q. Also MHA's profit margins?
10:54	13 <b>A. Sure, I do.</b>	13	<b>A. Yes.</b>
10:54	14 Q. And you certainly didn't think that this was a	14	Q. Things like their training manuals?
10:54	15 meaningless agreement at the time that you signed it?	15	<b>A. Yes.</b>
10:54	16 <b>A. No.</b>	16	Q. And the sales technique that MHA uses?
10:54	17 Q. Mr. Bowden, I want to walk through a few of	17	<b>A. Well --</b>
10:54	18 the specific provisions that are in here. If you can,	18	MR. VOLNEY: Objection; form.
10:54	19 can you turn with me to the second page of this	19	Q. (BY MS. NOWAK) Do you agree with me that MHA
10:54	20 agreement.	20	considers the sales technique that it uses to be
10:54	21 <b>A. Okay.</b>	21	confidential information?
10:54	22 Q. If you look at the top, it's entitled	22	<b>A. Yes. But I don't understand how that can be</b>
10:54	23 Article IV, Confidential Information.	23	<b>enforced because it's -- it's a part of me. I mean...</b>
10:54	24 <b>A. Uh-huh.</b>	24	Q. It's something that you learned while you
10:54	25 Q. And if you look down to Subpart E, there's a	25	were --
	<b>47</b>		<b>49</b>
10:54	1 definition there of MHA's confidential information.	1	<b>A. Sure.</b>
10:54	2 <b>A. Okay.</b>	2	Q. -- at MHA that they trained you on and how to
10:54	3 Q. And you would agree with me, based on reading	3	approach this business and this industry?
10:54	4 this provision, that MHA considers the exact names and	4	MR. VOLNEY: You mean making phone calls?
10:54	5 the clients of MHA to be confidential information?	5	I don't see sales technique in here. Can you point it
10:54	6 <b>A. I understand.</b>	6	out to me.
10:54	7 Q. Do you agree that MHA does consider that to be	7	MS. NOWAK: I sure can. If you look at
10:54	8 confidential information?	8	Provision A, the employee will develop confidential
10:54	9 <b>A. I agree.</b>	9	information relating to the exact names and contacts --
10:54	10 Q. And do you also agree that MHA considers the	10	contacts of clients of MHA, the fees charged by MHA, and
10:54	11 special needs of its clients to be confidential	11	sales techniques unique to the success of MHA.
10:55	12 information?	12	Q. (BY MS. NOWAK) Mr. Bowden, during your
10:55	13 <b>A. I agree.</b>	13	employment with MHA, did you have access to these types
10:55	14 Q. Do you agree that MHA considers its client	14	of things? Did you have access to the names of MHA's
10:55	15 database to be confidential information?	15	clients?
10:55	16 <b>A. I agree.</b>	16	<b>A. Yes.</b>
10:55	17 Q. Do you recall the name of MHA's database?	17	Q. Did you have access to special needs of MHA's
10:55	18 <b>A. Max.</b>	18	clients, what they were looking for in a doctor, the
10:55	19 Q. Did you have access to that database --	19	type of doctors that they would consider, things of that
10:55	20 <b>A. I did.</b>	20	nature?
10:55	21 Q. -- while you were employed with MHA?	21	<b>A. I did.</b>
10:55	22 <b>A. Yes.</b>	22	Q. We've already discussed you had access to the
10:55	23 Q. And was that database password protected?	23	client database.
10:55	24 <b>A. Yes.</b>	24	<b>A. Yes.</b>
10:55	25 Q. Not just anybody off the street could access	25	Q. Did you also have access to the fees that MHA

50

52

51

53

11:04 1 any of these questions or texts while you were an  
11:04 2 employee at Martin Fletcher?

11:04 3 **A. Possibly. I mean...**

11:04 4 Q. Well, you mentioned that you memorized it. So  
11:04 5 would it have been part of your airport interview at  
11:04 6 Martin Fletcher to use pieces from this script?

11:04 7 **A. No, because it's totally different, different**  
11:04 8 **type of work that I was doing at Martin Fletcher.**

11:04 9 Q. So none of the pieces on this script would be  
11:04 10 applicable to your work at Martin Fletcher or at  
11:04 11 Consilium?

11:04 12 **A. Not that I know of, no.**

11:04 13 Q. Well, please take a minute to -- to look at  
11:04 14 it.

11:04 15 **A. Well, I mean, it's -- it's totally -- totally**  
11:04 16 **different than what I -- what I've done at**  
11:08 17 **Martin Fletcher and Consilium.**

11:08 18 Q. But you did still have this in your possession  
11:08 19 at the time that you became employed by Consilium?

11:08 20 **A. Yes.**

11:08 21 Q. You had it at your disposal?

11:08 22 **A. Sure.**

11:08 23 Q. Did you ever attempt to access or use the MHA  
11:08 24 computer system before you tendered your resignation to  
11:08 25 MHA but after you had told Martin Fletcher you were

Now, it says here on that second part that,  
For a period of 12 months following the termination of  
this agreement by either party, for whatever reason, the  
employee will not engage in the same or similar business  
as MHA anywhere in the market area, including working as  
an agent, consultant, partner, employee, officer,  
shareholder, or independent contractor for any company  
of business engaged in the same or a similar business as  
MHA anywhere in the market area.

Did I read that correctly?

**A. Yes.**

Q. Okay. And if we flip the page, I think if you  
look about midway down under Subsection D, it actually  
defines what is considered a same or similar business.  
And it says, the same or similar business as MHA shall  
be defined as the business of recruitment of medical  
specialists, selling of services to clients, and account  
management of new and current business.

Did I read that correctly?

**A. Correct.**

Q. And then if we look down to that very next  
paragraph, it defines the market area as any location  
within 50 miles of MHA's offices --

**A. Okay.**

Q. -- is that correct?



16 (Pages 58 to 61)

11:13 1 Q. And the agreement says you cannot contact?  
11:13 2 A. Yes.  
11:13 3 Q. Let's flip the page one more. We're going to  
11:13 4 be on Page 5 of 8. And at the very bottom of that page,  
11:13 5 you can see the header that says Article VIII,  
11:13 6 Noninterference. But there's no actual text, so we'll  
11:13 7 flip to the following page.  
11:13 8 A. (Witness complies.)  
11:13 9 Q. Now, it says here at the top of Page 6, The  
11:13 10 employee agrees that for a period of 36 months  
11:13 11 subsequent to the termination of this agreement, whether  
11:13 12 such termination occurs at the insistence of MHA or the  
11:13 13 employee, the employee shall not solicit or recruit  
11:13 14 directly or by assisting others any other employees of  
11:13 15 MHA, its parent companies, subsidiary companies,  
11:13 16 affiliated companies, successors or assigns, nor shall  
11:13 17 the employee contact or communicate with any other  
11:13 18 employees of MHA.  
11:13 19 And then if we skip down a little further, it  
11:13 20 says, for the purpose of inducing other employees to  
11:13 21 terminate their employment with MHA.  
11:13 22 Did I read that correctly?  
11:13 23 A. Yes.  
11:13 24 Q. Okay. Let's go back and break that down a  
11:13 25 little bit because that's a big paragraph.

1 says here that you won't solicit or recruit  
2 directly or by assisting others. Do you see that? It's  
3 about three lines down.

4 **A. Correct.**

5 Q. So you would agree with me that you couldn't  
6 directly contact MHA's employees, correct?

7 **A. That's correct.**

8 Q. You would also agree with me that you couldn't  
9 assist someone else in contacting them?

10 **A. That's correct.**

11 Q. In general, you would agree with me that you  
12 can't instruct someone else to do something that you're  
13 prohibited from doing under this agreement?

14 MR. VOLNEY: Objection; form.

15 **A. I agree.**

16 Q. (BY MS. NOWAK) If this agreement says,  
17 Mr. Bowden, you can't recruit MHA employees or don't  
18 recruit MHA employees, you can't go whisper in someone  
19 else's ear and have them do that for you?

20 **A. Correct.**

21 Q. And you're not sitting here telling this jury  
22 that you think you can circumvent your employment  
23 agreement by having someone else do something you're  
24 prohibited from doing?

25 **A. Correct.**

**18 (Pages 66 to 69)**

Billy Jess Bowden

	70		72
11:34	1 number we were on.	1	Q. What do you mean?
11:34	2 THE REPORTER: 6.	2	<b>A. There was opportunity for advancement. It's a</b>
11:34	3 MS. NOWAK: Okay.	3	<b>faith-based organization, which I really liked about it.</b>
11:34	4 (Exhibit No. 6 marked.)	4	Q. And did it come up during this initial call
11:34	5 Q. (BY MS. NOWAK) Mr. Bowden, can you take a	5	with Ms. Stephens that you had been previously employed
11:34	6 moment to look back through this document that's been	6	by MHA?
11:34	7 marked as Deposition Exhibit 6.	7	<b>A. I don't recall.</b>
11:38	8 <b>A. Yes.</b>	8	Q. Was she aware that you had been previously by
11:38	9 Q. Okay. And if we scroll to the beginning of	9	MHA?
11:38	10 this string, which starts at the bottom of this page	10	<b>A. I don't know.</b>
11:38	11 where it says, Hi, Billy, is this a true and correct	11	Q. Following this call with Ms. Stephens, what
11:38	12 copy of the first contact that you received from	12	happened next?
11:38	13 Consilium about potential employment?	13	<b>A. I think her and I met the next day -- or</b>
11:38	14 <b>A. Yes.</b>	14	<b>whatever this was. It might have been the next day.</b>
11:38	15 Q. Okay. And in this e-mail, did Ms. Stephens	15	MS. NOWAK: Lezley, let's make this our
11:38	16 advise you Consilium was looking for new hires and she	16	next one.
11:38	17 was encouraging you to contact her?	17	(Exhibit No. 7 marked.)
11:38	18 <b>A. Yes.</b>	18	<b>A. I went to a meeting at her office.</b>
11:38	19 Q. Did you believe that Ms. Stephens was trying	19	Q. (BY MS. NOWAK) And when you say her office,
11:38	20 to recruit you to go to work for Consilium?	20	do you mean Consilium's offices?
11:38	21 <b>A. Sure, yes.</b>	21	<b>A. Correct.</b>
11:38	22 Q. Is that Ms. Stephens' role, her job function	22	Q. Mr. Bowden, will you take just a minute to
11:38	23 for Consilium, she's a corporate recruiter, she goes out	23	look at this next exhibit.
11:38	24 and finds new hires or contacts new hires for Consilium?	24	<b>A. (Witness complies.)</b>
11:38	25 <b>A. Yes.</b>	25	Q. Does this -- does this exhibit reflect that
	71		73
11:38	1 Q. Did you ever work with Ms. Stephens during	1	you met with Ms. Stephens at Consilium's offices on July
11:38	2 your employment at MHA?	2	the 24th?
11:38	3 <b>A. No.</b>	3	<b>A. Yes.</b>
11:38	4 Q. Are you aware that she used to be employed by	4	Q. During this meeting, did you meet with anyone
11:38	5 a company who's part of the AMN Healthcare family?	5	else or was it just Ms. Stephens?
11:38	6 <b>A. I believe she told me that at some point.</b>	6	<b>A. Just Ms. Stephens.</b>
11:38	7 Q. Did you contact or reach out or somehow	7	Q. Okay. And do you recall, were Consilium's
11:38	8 otherwise initiate with Ms. Stephens prior to the time	8	offices where you interviewed the same that you work at
11:34	9 you received this LinkedIn message?	9	today?
11:34	10 <b>A. No.</b>	10	<b>A. No.</b>
11:34	11 Q. Did Ms. Stephens ever tell you who gave her	11	Q. And where were the offices that you
11:34	12 your name or how she came across your name?	12	interviewed at?
11:34	13 <b>A. No.</b>	13	<b>A. Williams Square.</b>
11:34	14 Q. What happened next? What happened after you	14	Q. Okay. And how far away is that from MHA?
11:34	15 got this e-mail message from Ms. Stephens?	15	<b>A. 10 miles, 15 miles.</b>
11:34	16 <b>A. I responded to it.</b>	16	Q. What did Ms. Stephens tell you about the job
11:34	17 Q. Okay. And after you responded, what happened	17	when you met in person?
11:34	18 next?	18	<b>A. She basically just sold the job to me. I</b>
11:34	19 <b>A. Her and I talked.</b>	19	<b>don't remember the specifics, but kind of went over what</b>
11:34	20 Q. And what did you discuss?	20	<b>they did and what they were looking for.</b>
11:34	21 <b>A. What they did and what they were looking for,</b>	21	Q. And after this initial meeting with
11:34	22 <b>I guess.</b>	22	Ms. Stephens, did you have any other meetings with
11:34	23 Q. And why did you think that you would be a good	23	Consilium?
11:34	24 fit for Consilium?	24	<b>A. After this?</b>
11:34	25 <b>A. Because of the opportunity there.</b>	25	Q. Yes.

1 Does that refresh your recollection as to when  
2 this second meeting took place?  
3 **A. Yes.**  
4 Q. Okay. And so if we counted out, it looks like  
5 the second meeting that you had with Consilium was on  
6 Monday, July the 30th?  
7 **A. I'll agree with that.**  
8 Q. And did anyone else participate besides Kyle,  
9 Amy, or Tisha in that meeting?  
10 **A. No.**  
11 Q. And what was the purpose of your meeting with  
12 Kyle, Amy, and Tisha?  
13 **A. It was basically an interview.**  
14 Q. Okay. And when you say basically an  
15 interview, what is your understanding of what the end  
16 result would be if the interview went well?  
17 **A. I would be given an offer to join the company.**  
18 Q. Okay. So did you feel like Kyle, Amy, and  
19 Tisha were trying to convince you to come to work for  
20 Consilium during the course of this interview?  
21 **A. I think they were -- we were both trying to**  
22 **feel each other out, I guess. I don't know -- yeah.**  
23 Q. And when you say feel each other out, what do  
24 you mean?  
25 **A. I wasn't totally sold that I wanted to come to**

1 for MHA?

2 **A. I don't remember.**

3 Q. Was it at all discussed that you had

4 experience in the staffing industry?

5 **A. Yes.**

6 Q. Okay. Tell me what was discussed about your

7 prior experience.

8 **A. Mostly what I was doing at Martin Fletcher**

9 **because it was pertinent to what I would be doing at**

10 **Consilium.**

11 Q. Do you recall when you accepted Consilium's

12 offer of employment?

13 **A. I don't. I know it was a Friday.**

14 Q. If I told you that it was on Friday, August

15 the 3rd of 2012, does that sound about right?

16 **A. Yes.**

17 Q. Do you have an employment agreement between

18 yourself and Consilium?

19 **A. No.**

20 Q. Do you have any type of agreement at all with

21 Consilium related to your employment?

22 **A. No.**

23 Q. No confidentiality agreement?

24 **A. No.**

25 Q. No noncompete?

Billy Jess Bowden

	78	80
11:43	1 A. No.	1 Q. Are you able to go and look at the number of
11:43	2 Q. No nonsolicit?	2 days that you filled?
11:43	3 A. No.	3 A. I have it written down somewhere. But I'm
11:43	4 Q. No noninterference?	4 sure if I asked, I could, I guess.
11:43	5 A. No.	5 Q. But you've never just been curious and said,
11:43	6 Q. Did you ever sign an employee handbook?	6 gosh, I'm going to see, we're six months into the year,
11:43	7 A. No.	7 how many days have I filled?
11:43	8 Q. Did you ever agree to follow any information	8 A. I kind of have a rough idea.
11:43	9 systems policies?	9 Q. Okay. And how -- where -- how do you get the
11:43	10 A. No.	10 rough idea? Do you track it yourself or is there --
11:44	11 Q. Consilium just doesn't have their employees	11 A. I track it myself.
11:44	12 sign anything?	12 Q. -- you know, a -- a spreadsheet or an e-mail
11:44	13 A. (Witness shakes head.)	13 blast that gets sent around once a month that says,
11:44	14 Q. You've never had to sign a single document	14 great job team, here's how many days we've filled thus
11:44	15 other than your offer letter for Consilium?	15 far?
11:44	16 A. I don't remember.	16 A. Yes, there's that, as well as a team --
11:44	17 Q. So is it possible that you've had to sign	17 Q. Okay.
11:44	18 other policies or procedures for Consilium?	18 A. -- for the team.
11:44	19 A. I honestly don't remember. Possible, maybe.	19 Q. So walk me through what kind of communications
11:44	20 Q. Are there any other employees at Consilium who	20 do you get that would update you and your team on the
11:44	21 have employment agreements?	21 number of days that have been filled or the clients that
11:44	22 A. I don't know.	22 days have been filled for?
11:44	23 Q. It's not ever been a subject of conversation	23 A. We talk about it.
11:44	24 between you and any of the other employees?	24 Q. Okay. So how often do you have meetings?
11:44	25 A. No.	25 A. Every day.
	79	81
11:44	1 Q. How does Consilium compensate you?	1 Q. Okay. And then in addition to that, are
11:44	2 A. I get a salary plus commission.	2 there --
11:44	3 Q. And how are your commissions calculated?	3 A. Monthly --
11:44	4 A. How many days a doctor works. I get a certain	4 Q. -- e-mails --
11:44	5 amount --	5 A. -- weekly.
11:44	6 Q. And --	6 Q. -- circulated --
11:44	7 A. -- for each day.	7 A. Possibly.
11:44	8 Q. Sorry to interrupt you.	8 Q. -- with those types of reports?
11:44	9 Where is that information kept? Like if I	9 A. Yes.
11:44	10 wanted to go to see how many days that you had filled,	10 Q. Do you know how many employees Consilium
11:44	11 where would that information be maintained?	11 currently has?
11:44	12 A. I'm sure there's a spreadsheet somewhere.	12 A. I don't know the exact number. Probably 70.
11:43	13 Q. Would that information be in Blue Sky?	13 Q. Do you know how many of them have previously
11:43	14 A. No.	14 worked at MHA?
11:43	15 Q. Okay. So it -- it would be elsewhere.	15 A. No.
11:43	16 Do you get any bonuses in additional to your	16 Q. Can you give me just a rough estimate?
11:43	17 salary and commissions or is there the potential for	17 A. Three.
11:43	18 bonuses?	18 Q. Total out of all 70?
11:43	19 A. It's just commissions. Oh, we have -- oh, we	19 A. Right now, me. That's it --
11:43	20 do have a team bonus that we could possibly get.	20 Q. Okay.
11:43	21 Q. But that would be for your entire team, not	21 A. -- that I know of. I don't -- I don't know
11:43	22 something that would just be attributable to you?	22 for sure.
11:43	23 A. Yes.	23 Q. Okay. What about for the AMN Healthcare
11:43	24 And there's another bonus that we get for --	24 family of companies?
11:43	25 if we fill a certain number of days with a new client.	25 A. I don't know.

Billy Jess Bowden

	82	84
11:48	1 Q. Okay.	1 a company --
11:48	2 (Exhibit No. 9 marked.)	2 <b>A. Staff Care.</b>
11:48	3 Q. (BY MS. NOWAK) This is a document produced by	3 Q. -- that's part -- okay.
11:48	4 you in the course of this litigation.	4 What about John Moberly?
11:48	5 Is this a complete listing of the employees at	5 <b>A. John Moberly, yes.</b>
11:48	6 Consilium?	6 Q. Kyle Etter?
11:48	7 <b>A. No.</b>	7 <b>A. Yes.</b>
11:48	8 Q. Okay. Can you tell me who is not included on	8 Q. Monique DeGraauw?
11:48	9 this list?	9 <b>A. Oh, yes.</b>
11:48	10 <b>A. I have no idea. There's a lot.</b>	10 Q. Greg Ellis?
11:48	11 Q. Okay. So you tell me what -- what is this	11 <b>A. Yes.</b>
11:48	12 list, then?	12 Q. Jill Kennedy?
11:48	13 <b>A. I think this was the list when I started.</b>	13 <b>A. I really didn't have -- know her very well, so</b>
11:48	14 Q. Okay. So Consilium's grown significantly just	14 <b>I never really discussed it with her.</b>
11:48	15 in the short amount of time since you've joined?	15 Q. Okay. So despite the fact that you had never
11:48	16 <b>A. Yes.</b>	16 discussed it, do you know if she was employed by --
11:48	17 Q. And these folks were the ones that were there	17 <b>A. I don't know.</b>
11:48	18 when you started with Consilium in August of 2012?	18 Q. You don't know?
11:48	19 <b>A. Yes.</b>	19 <b>A. No.</b>
11:48	20 Q. Did you work with any of these folks while you	20 Q. Okay. And you know, if you don't mind, just
11:48	21 were at MHA?	21 take another quick look through. Are there any others
11:48	22 <b>A. Lyndsey Nix. She's in the second group.</b>	22 that you're aware? Because there's quite a few that
11:48	23 Q. Okay. And what was your relationship with	23 we've gone back through and reminded ourself about.
11:48	24 Lyndsey while you were at MHA?	24 <b>A. I believe Kevin Bruce might have worked for</b>
11:48	25 <b>A. I just knew -- knew she worked there. I</b>	25 <b>Merritt Hawkins at some point. That's all that I know</b>
	83	85
11:49	1 <b>didn't --</b>	1 <b>that I can recall.</b>
11:49	2 Q. Okay.	2 Q. Now, in looking at this list and the names
11:49	3 <b>A. -- really know her.</b>	3 that you've identified as being previously employed by
11:49	4 Q. Is there anybody else besides Lyndsey Nix on	4 MHA and/or some other AMN Healthcare company, you've
11:49	5 this list that you're aware of that was previously	5 identified over 50 percent of the names on this list --
11:49	6 employed at MHA?	6 <b>A. Okay.</b>
11:49	7 <b>A. Not that I know of.</b>	7 Q. -- is that correct?
11:49	8 Q. Okay. And what about the AMN Healthcare	8 <b>A. Yes.</b>
11:49	9 family of companies, is there anyone on this list you	9 Q. Does that sound about right to you, that those
11:49	10 know of that worked for Staff Care or any other AMN	10 are the folks that are working at Consilium?
11:49	11 company?	11 <b>A. Some -- some of these aren't working at</b>
11:49	12 <b>A. Brent.</b>	12 <b>Consilium anymore.</b>
11:49	13 Q. Brent Burrows?	13 Q. But at the time that you started, these were
11:49	14 <b>A. Uh-huh.</b>	14 the folks at Consilium?
11:49	15 <b>Matt Kennedy, Tisha Schwartz, Landon Webb,</b>	15 <b>A. Yes.</b>
11:49	16 <b>Amy Crowdis who is now Amy Gentile, Sheri -- or</b>	16 Q. And over 50 percent of them were plucked from
11:49	17 <b>Michael Lawless and Sheri Ossorio, I think</b>	17 MHA or AMN Healthcare?
11:49	18 <b>Jessica Ferguson.</b>	18 MR. VOLNEY: Objection; form.
11:49	19 THE REPORTER: Who?	19 <b>A. I don't know if they were plucked or what.</b>
11:49	20 THE WITNESS: Jessica Ferguson.	20 Q. (BY MS. NOWAK) But they came from there?
11:49	21 <b>A. Oh, and Christina Stephens.</b>	21 <b>A. Yes.</b>
11:49	22 Q. (BY MS. NOWAK) What about Matt Baade, are you	22 Q. Okay. Now, did you actually have specific
11:49	23 aware if he ever worked for --	23 conversations with any of these folks about their prior
11:49	24 <b>A. I am aware that he worked for them.</b>	24 experience or you just know from being at MHA that they
11:49	25 Q. And when you say for them, you're referring to	25 had previously worked there?

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<p>11:50 1 A. I didn't know any of these people previously  11:54 2 except Kyle and possibly Amy.  11:54 3 Q. Okay. And how did you know Kyle and Amy?  11:54 4 A. They worked out in the gym.  11:54 5 Q. So you just talked to them during gym time?  11:54 6 A. Uh-huh.  11:54 7 And Landon.  11:54 8 Q. And Landon?  11:54 9 A. Uh-huh.  11:54 10 Q. Just pleasant conversation?  11:54 11 A. Correct.  11:55 12 Q. Okay. And you mentioned that some of these  11:55 13 folks are no longer at Consilium. Which of these folks  11:55 14 are no longer at Consilium?  11:55 15 A. Kevin Bruce, Lyndsey Nix, Matt Kennedy,  11:55 16 Jill Kennedy, and Christina Stephens.  11:55 17 Q. When did Christina Stephens leave?  11:55 18 A. I think it was a couple of months ago.  11:58 19 Q. Do you know what, I'm going to hand you this  11:58 20 pen just real quick. Let's do an exercise.  11:58 21 Do you mind going down the list and for each  11:58 22 of the folks that you've identified as having worked for  11:58 23 MHA or an AMN Healthcare company, can you please circle  11:58 24 their name.  11:58 25 A. (Witness complies.)</p>	<p>86 88</p> <p>1 Q. No scuttlebutt around the office?  2 A. I have no idea.  3 Q. What about Lyndsey Nix?  4 A. I didn't really talk to her before -- I think  5 she was getting married, moving.  6 Q. And then you also reported that  7 Christina Stephens has now left. And are you aware of  8 why she left?  9 A. Take care of her -- her daughter.  10 Q. Did she just have a baby?  11 A. Uh-huh.  12 (Exhibit No. 10 marked.)  13 Q. (BY MS. NOWAK) Mr. Bowden, we've just handed  14 you what has been marked Deposition Exhibit No. 10. Can  15 you tell me what this is.  16 A. It's a text message from Scott Gresham.  17 Q. Okay. And who -- who is this text message to?  18 A. To me.  19 Q. So is this a screen shot from your phone?  20 A. I believe it was his phone.  21 Q. From his phone. Okay.  22 And so is this a true and correct copy of the  23 communication between yourself and Mr. Gresham?  24 A. Correct.  25 Q. Is this a complete copy of the text message?</p>
<p>11:58 1 MS. NOWAK: I'm not sure the video caught  11:58 2 that big eye roll, John. Do we want to make sure that's  11:58 3 on the record?  11:58 4 MR. VOLNEY: Duly noted.  11:58 5 Q. (BY MS. NOWAK) And just to make sure we've  11:58 6 got them all, can you read down the ones that you've  11:58 7 circled very quickly.  11:58 8 A. Matt Baade, Kevin Bruce, Brent Burrows,  11:58 9 Matthew Kennedy, John Moberly, Kyle Etter, Lyndsey Nix,  11:58 10 Tisha Schwartz, Landon Webb, Amy Gentile,  11:58 11 Michael Lawless, Sheri Ossorio, Monique DeGrauw,  11:58 12 Greg Ellis, Jessica Ferguson, and Christina Stephens.  11:58 13 Q. Okay. And of these -- these folks that you've  11:58 14 circled, you knew Kyle Etter, Lyndsey Nix, Landon Webb,  11:58 15 and Amy Crowdis from your employment at MHA?  11:58 16 A. I didn't -- I didn't know their names.  11:58 17 Q. During the time that you were employed.  11:58 18 A. Outside of Lyndsey Nix, I didn't know their  11:58 19 names. But I know them, yes.  11:58 20 Q. Do you know why Kevin Bruce left Consilium?  11:54 21 A. No.  11:54 22 Q. What about Matt Kennedy?  11:54 23 A. I don't know.  11:54 24 Q. He didn't tell you anything before he left?  11:54 25 A. No.</p>	<p>87 89</p> <p>1 It appears that it might have been cut off here at the  2 end. Was there more that went after this in your  3 discussion?  4 A. Not that day.  5 Q. Not that day?  6 A. (Witness shakes head.)  7 Q. But subsequent to, there would have been?  8 A. I don't remember.  9 Q. But it's possible?  10 A. Possible.  11 Q. And do you believe it's likely?  12 A. I honestly don't remember.  13 Q. What about before, the initial string here is,  14 hey, are you still at Delta? Would there have been any  15 communication between yourself and Mr. Gresham prior to  16 that message?  17 A. No.  18 Q. Okay. Who's Deleon McKee?  19 A. He's someone that Stephan -- Stephan -- that  20 Scott and I worked with at MHA.  21 Q. Okay. And when you say Deleon McKee  22 interviewed, what does that mean?  23 A. He had interviewed at Consilium.  24 Q. And how did -- is Deleon a male or a female?  25 A. It's a male.</p>



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	90		92
11:59	1 Q. And how did Deleon get hooked up with	1 A. Yes.	
11:59	2 Consilium? Who -- who provided Consilium his contact	2 Q. Did he ever tell you at any point in time that	
11:59	3 information?	3 he had an employment agreement with MHA prior to the	
11:59	4 A. I don't know.	4 lawsuit being filed?	
11:59	5 Q. Were you involved at all in his interview	5 A. I don't remember.	
11:59	6 process?	6 Q. But you knew other employees at MHA had	
11:59	7 A. No.	7 employment agreements?	
11:59	8 Q. How did you come to be aware that Mr. McKee	8 A. It wasn't something that we ever discussed. I	
11:59	9 was interviewing with Consilium?	9 didn't really know.	
11:59	10 A. I saw him in the office.	10 Q. Okay. But Mr. Gresham never told you he was	
11:59	11 Q. Just passed him in the hall?	11 some special case, some special exception?	
11:59	12 A. Just said hi to him.	12 A. It was never discussed.	
11:59	13 Q. And what did he say when you passed him in the	13 Q. And you have no reason to believe at the time	
11:59	14 hall?	14 that you were having these messages that he was some	
11:59	15 A. That he was interviewing with Consilium.	15 special case or some special exception?	
11:59	16 Q. And that would have been on or about this	16 A. I didn't --	
11:59	17 September 17th date?	17 MR. VOLNEY: Objection; form.	
11:59	18 A. On or around.	18 A. I didn't know either way.	
11:59	19 Q. Did you -- did Mr. McKee come to be employed	19 Q. (BY MS. NOWAK) Other than this particular	
11:59	20 by Consilium?	20 text message, from the time your employment at MHA ended	
11:59	21 A. No.	21 until September 17th, 2012, did you text with	
11:59	22 Q. Do you know who met with him when he was at	22 Mr. Gresham?	
11:59	23 Consilium's offices?	23 A. I think we text once in 20- -- that would have	
11:59	24 A. I don't know.	24 been 2011.	
11:59	25 Q. Would Ms. Stephens have met with him?	25 Q. Okay. And what was the substance of that	
	91		93
12:00	1 A. Possibly.	1 communication?	
12:00	2 Q. And likely others?	2 A. I asked him if he needed life insurance.	
12:00	3 A. I don't know.	3 Q. Okay. So from this -- from this text	
12:00	4 Q. What is the date on this string of messages	4 regarding the life insurance in 2011 to September 17th	
12:00	5 between yourself and Mr. Gresham?	5 in 2012, you had no other text messages with	
12:00	6 A. September 17th, 2012.	6 Mr. Gresham?	
12:00	7 Q. And you were aware on September 17th of 2012	7 A. Not that I recall.	
12:00	8 that Mr. Gresham was an employee of MHA?	8 Q. Okay. Did you ever e-mail with Mr. Gresham?	
12:00	9 A. Yes.	9 A. That might have been an e-mail. I don't	
12:00	10 Q. And you knew Gresham from your employment at	10 recall if it was a text or an e-mail asking about the	
12:00	11 MHA?	11 life insurance.	
12:00	12 A. Correct.	12 Q. But other than that one asking about life	
12:00	13 Q. And you knew that Mr. Gresham was employed at	13 insurance, you don't recall anything happening before	
12:00	14 MHA as a search consultant?	14 this particular text message?	
12:00	15 A. Correct.	15 A. I don't recall.	
12:00	16 Q. And when you left MHA, you were aware that	16 Q. Okay. Did you ever meet with him in person --	
12:00	17 Mr. Gresham also had an employment agreement with them?	17 A. No.	
12:00	18 A. I don't remember.	18 Q. -- face to face?	
12:00	19 Q. Okay. So let's change that from the time you	19 What about phone conversations?	
12:00	20 left MHA.	20 A. No.	
12:00	21 You were aware that at some point in time,	21 Q. Okay. So just to confirm, from the time that	
12:00	22 Mr. Gresham had an employment agreement with MHA?	22 you left MHA until September 17th 2012, the only other	
12:00	23 A. It was never discussed 'til we were served.	23 communication you recall having with Mr. Gresham was one	
12:00	24 Q. Okay. So you're aware as we sit here today	24 in 2011 where you asked him if he needed life insurance?	
12:00	25 that he had and employment agreement?	25 A. That's the only one I can remember.	

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<p>12:03 1</p> <p>12:03 2</p> <p>12:03 3</p> <p>12:03 4</p> <p>12:03 5</p> <p>12:03 6</p> <p>12:03 7</p> <p>12:03 8</p> <p>12:03 9</p> <p>12:03 10</p> <p>12:03 11</p> <p>12:03 12</p> <p>12:03 13</p> <p>12:03 14</p> <p>12:03 15</p> <p>12:03 16</p> <p>12:03 17</p> <p>12:03 18</p> <p>12:04 19</p> <p>12:04 20</p> <p>12:04 21</p> <p>12:04 22</p> <p>12:04 23</p> <p>12:04 24</p> <p>12:04 25</p>	<p style="text-align: right;">94</p> <p>Q. Okay. And it's possible that there are</p> <p>strings that came before or after the ones that are</p> <p>shown in this deposition exhibit?</p> <p><b>A. I don't think there was anything -- there</b></p> <p><b>wasn't anything before. That's the first time I had</b></p> <p><b>heard it -- heard from him --</b></p> <p>Q. But --</p> <p><b>A. -- in a long time.</b></p> <p>Q. -- there might have been something that</p> <p>happened after?</p> <p><b>A. I don't -- I don't know. I think possibly.</b></p> <p>Q. All right. Let's look at this text message.</p> <p>So on September 17th, you communicated to</p> <p>Mr. Gresham that you would have Christina Stephens, who</p> <p>is Consilium's corporate reporter -- excuse me --</p> <p>corporate recruiter -- or who was -- contact him about a</p> <p>possible employment opportunity at Consilium?</p> <p><b>A. He told me he was leaving, he was going to</b></p> <p><b>quit Merritt Hawkins. And yes, I told him Christina</b></p> <p><b>would call him.</b></p> <p>Q. Okay. You said he told you that he was going</p> <p>to quit Merritt Hawkins.</p> <p>Where in this string did Mr. Gresham advise</p> <p>you that he was going to quit?</p> <p><b>A. We talked between -- between texts.</b></p>	<p style="text-align: right;">96</p> <p><b>A. I don't know when she contacted him.</b></p> <p>Q. How did Ms. Stephens get Mr. Gresham's contact</p> <p>information?</p> <p><b>A. I gave it to her.</b></p> <p>Q. So you're not denying that you handed</p> <p>Mr. Gresham's contact information to Ms. Stephens?</p> <p><b>A. No.</b></p> <p>Q. You told her to contact him?</p> <p><b>A. I didn't tell her to contact him. I told her</b></p> <p><b>this guy is going to be leaving Merritt Hawkins, I'm not</b></p> <p><b>giving him as a referral because I don't like giving</b></p> <p><b>referrals on anybody, but if you want to call him, if</b></p> <p><b>you want -- see what you think.</b></p> <p>Q. So you understood after you handed his contact</p> <p>information over, that Ms. Stephens might reach out to</p> <p>Mr. Gresham?</p> <p><b>A. Correct.</b></p> <p>Q. And that the end result of that communication</p> <p>could be that he was offered a position of employment at</p> <p>Consilium?</p> <p><b>A. At some point or maybe not if they don't like</b></p> <p><b>him.</b></p> <p>Q. But you're aware that a potential result once</p> <p>you handed Ms. Stephens his contact information was that</p> <p>he would be employed by Consilium?</p>
<p>12:04 1</p> <p>12:04 2</p> <p>12:04 3</p> <p>12:04 4</p> <p>12:04 5</p> <p>12:04 6</p> <p>12:04 7</p> <p>12:04 8</p> <p>12:04 9</p> <p>12:04 10</p> <p>12:04 11</p> <p>12:04 12</p> <p>12:04 13</p> <p>12:04 14</p> <p>12:04 15</p> <p>12:04 16</p> <p>12:04 17</p> <p>12:04 18</p> <p>12:04 19</p> <p>12:04 20</p> <p>12:04 21</p> <p>12:04 22</p> <p>12:04 23</p> <p>12:04 24</p> <p>12:04 25</p>	<p style="text-align: right;">95</p> <p>Q. You talked between texts.</p> <p>So when you told me earlier that the only</p> <p>communication you had with Mr. Gresham between the</p> <p>2011 -- or excuse me -- when you're departing MHA and</p> <p>this text message was the 2011 communication regarding</p> <p>life insurance, that was not true?</p> <p><b>A. We talked between these two texts.</b></p> <p>Q. So on September 17th?</p> <p><b>A. When he texted me, I called him.</b></p> <p>Q. Okay. And what did y'all talk about?</p> <p><b>A. He told me that he was quitting.</b></p> <p>Q. Did he tell you he had already quit or that he</p> <p>was going to?</p> <p><b>A. He was going to.</b></p> <p>Q. And what did he want you to do for him?</p> <p><b>A. He asked me if we needed anybody and if I was</b></p> <p><b>happy there.</b></p> <p>Q. Okay. So as we sit here today, you're not</p> <p>disagreeing with me that this text message is about the</p> <p>possibility of Mr. Gresham becoming employed by</p> <p>Consilium?</p> <p><b>A. No, I'm not disagreeing with you.</b></p> <p>Q. Okay. And are you aware that on this same</p> <p>day, September 17th, that Christina Stephens contacted</p> <p>Mr. Gresham?</p>	<p style="text-align: right;">97</p> <p><b>A. Yes.</b></p> <p>Q. So you communicated with Mr. Gresham regarding</p> <p>Consilium?</p> <p><b>A. After he communicated with me, yes.</b></p> <p>Q. But you did communicate with him?</p> <p><b>A. Yes.</b></p> <p>Q. And you determined that he was interested in</p> <p>job opportunities at Consilium?</p> <p><b>A. Yes.</b></p> <p>Q. And you facilitated Mr. Gresham getting in</p> <p>touch with Ms. Stephens?</p> <p><b>A. Yes.</b></p> <p>Q. And you're aware that Ms. Stephens did</p> <p>actually contact Mr. Gresham?</p> <p><b>A. At some point, yes.</b></p> <p>Q. Do you know at what point in time that was?</p> <p><b>A. No.</b></p> <p>Q. So after Ms. Stephens spoke with Mr. Gresham,</p> <p>did she come and report back to you about how the call</p> <p>had gone?</p> <p><b>A. I don't recall. Possibly.</b></p> <p>MS. NOWAK: Let's mark this one.</p> <p>THE REPORTER: Okay.</p> <p>(Exhibit No. 11 marked.)</p> <p>Q. (BY MS. NOWAK) Does this e-mail refresh your</p>

25 (Pages 94 to 97)

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	98	100
12:03	1 recollection that Christina and Mr. Gresham first talked	1 <b>A. Exactly. He's got a family and a wife. I</b>
12:03	2 on September the 19th?	2 <b>wouldn't have done that.</b>
12:03	3 <b>A. I wasn't a part of that call or this e-mail,</b>	3 Q. Are you aware that following this text message
12:03	4 <b>so I guess --</b>	4 that you had with Mr. Gresham on September 17th, that
12:03	5 Q. But if I represented to you that they did	5 Mr. Gresham actually came into Consilium's offices for
12:03	6 speak on September 19th, 2012, you would agree with me	6 an interview?
12:03	7 this e-mail seems to support that?	7 <b>A. At some point.</b>
12:03	8 MR. VOLNEY: Objection; form.	8 Q. But you are aware that he actually did come
12:03	9 <b>A. Yes.</b>	9 into the offices to be interviewed?
12:08	10 Q. (BY MS. NOWAK) Okay. And you said that	10 <b>A. Yes, I'm aware of that.</b>
12:08	11 Ms. Stephens may have come to report back to you about	11 Q. Did you see him when he was at Consilium's
12:08	12 the call that she had with Mr. Gresham.	12 offices for that interview?
12:08	13 Do you recall anything that she told you about	13 <b>A. I don't remember.</b>
12:08	14 the call?	14 Q. Do you recall speaking with him?
12:08	15 <b>A. No, not specifically.</b>	15 <b>A. I don't remember. Not -- not at the office.</b>
12:08	16 Q. Okay. She didn't say the call went well, he	16 Q. Okay. Did you speak with him after the
12:08	17 seems like a strong candidate, thanks for putting us in	17 interview had occurred?
12:08	18 touch? You don't recall any specifics that she relayed	18 <b>A. Yes.</b>
12:08	19 to you?	19 Q. Okay. And what was the substance of that
12:08	20 <b>A. She possibly said that, yes.</b>	20 communication?
12:08	21 Q. Possibly said which of those things?	21 <b>A. The fact that he liked this new industry and</b>
12:08	22 <b>A. That he was a good candidate, I guess.</b>	22 <b>the fact that it seemed like a good place to work.</b>
12:08	23 Q. Did Mr. Gresham reach out to you again after	23 Q. So he told you that he liked the opportunity
12:08	24 Ms. Stephens and he had spoken?	24 and was excited about the chance to become employed by
12:08	25 <b>A. Yes.</b>	25 Consilium?
	99	101
12:08	1 Q. Okay. And when did that communication occur?	1 <b>A. Right.</b>
12:08	2 <b>A. I don't remember exactly.</b>	2 Q. Did he thank you for kind of setting him up
12:08	3 Q. Would it have been after this September 17th	3 with Christina?
12:08	4 text message?	4 <b>A. I don't remember.</b>
12:08	5 <b>A. It was after the text message, yes.</b>	5 Q. Are you aware that Mr. Gresham then was
12:08	6 Q. Okay. Would it have been before or after	6 ultimately offered employment at Consilium?
12:08	7 September 19th?	7 <b>A. Yes.</b>
12:08	8 <b>A. I don't know.</b>	8 Q. Who told you that that offer had been
12:08	9 Q. Okay. Was it via telephone?	9 extended?
12:08	10 <b>A. I believe we talked.</b>	10 <b>A. He did.</b>
12:08	11 Q. Did you also text?	11 Q. And when did he tell you that?
12:08	12 <b>A. I don't remember.</b>	12 <b>A. I don't remember.</b>
12:08	13 Q. Can you tell me what -- what did y'all talk	13 Q. Do you recall how he told you?
12:09	14 about on that telephone call?	14 <b>A. I think he called me.</b>
12:09	15 <b>A. Mostly about his situation at Merritt Hawkins.</b>	15 Q. Did he tell you during that call whether he
12:09	16 Q. Did he express that he was interested	16 intended to accept the offer?
12:09	17 following speaking with Ms. Stephens about becoming	17 <b>A. He didn't have a job, so yes.</b>
12:09	18 employed at Consilium?	18 Q. And when you say he didn't have a job, what --
12:09	19 <b>A. No. He was talking about quitting</b>	19 what do you mean by that?
12:09	20 <b>Merritt Hawkins. And I was trying to talk him out of it</b>	20 <b>A. He'd quit Merritt Hawkins.</b>
12:09	21 <b>because he was trying to -- because I was, like, you</b>	21 Q. And why was it your impression that he had
12:10	22 <b>don't have a job yet, you don't have anything, why would</b>	22 already resigned from Merritt Hawkins at the time he
12:10	23 <b>you quit your job? And he was just sick of it.</b>	23 accepted his offer of employment at Consilium?
12:10	24 Q. So your advice to him was wait 'til you have	24 <b>A. He told me.</b>
12:10	25 another job before you quit the one you've got?	25 Q. Sorry. Bear with me just for a second. I'm

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	<b>102</b>		<b>104</b>
12:09	1 trying to find my documents.	1	<b>A. I don't know about talked with Ms. Stephens or</b>
12:09	2 MR. VOLNEY: Do you want to take lunch?	2	<b>interview.</b>
12:09	3 MS. NOWAK: That might be helpful because	3	Q. Okay. Can you look back at the e-mails that
12:09	4 I seem to have misplaced one of my folders. And then	4	we've reviewed here today.
12:09	5 we're, like, 12:15. You want to take --	5	<b>A. Uh-huh.</b>
12:09	6 MR. VOLNEY: Start back at 1:00.	6	Q. And does any of that remind you --
12:09	7 MS. NOWAK: -- 45 minutes?	7	<b>A. I guess they --</b>
12:09	8 Thank you.	8	Q. -- of --
12:09	9 THE VIDEOGRAPHER: We are now off the	9	<b>A. -- did talk on the 19th.</b>
12:09	10 record. The time is 12:11 p.m.	10	Q. Okay. So by the time this date,
12:49	11 (Lunch break taken from 12:11 to 1:07 p.m.)	11	September 24th, rolls around, you're aware that you had
13:09	12 THE VIDEOGRAPHER: We are back on the	12	communicated with Mr. Gresham about potential employment
13:09	13 record. The time is 1:07 p.m.	13	and Ms. Stephens had communicated with Mr. Gresham about
13:09	14 Q. (BY MS. NOWAK) Mr. Bowden, we're back after	14	potential employment?
13:09	15 taking a brief lunch break. And where we left off, we	15	<b>A. I don't know what they talked about, but --</b>
13:09	16 were talking about Mr. Gresham's resignation from MHA	16	Q. You're aware --
13:09	17 and the start of his employment at Consilium.	17	<b>A. -- I talked to him.</b>
13:09	18 <b>A. (Witness nods head.)</b>	18	Q. -- they communicated?
13:09	19 Q. So I want to go back and just make sure I'm	19	<b>A. Yes.</b>
13:09	20 getting the time frame correctly.	20	Q. Now, it says in this e-mail -- if you'll look
13:00	21 You and Mr. Gresham communicated about his	21	in the second paragraph, it says, For the past few
13:00	22 possible employment at Consilium on September the 17th	22	months, my heart and mind have not been focused solely
13:00	23 of 2012, correct?	23	on physician recruiting, and I have received an offer
13:00	24 <b>A. Correct.</b>	24	that I cannot refuse that will be a new and exciting
13:00	25 Q. Okay. And you've testified here today that	25	endeavor for me.
	<b>103</b>		<b>105</b>
13:00	1 you believe that Mr. Gresham had quit MHA before the	1	Did I read that correctly?
13:00	2 time he actually officially started at Consilium?	2	<b>A. Yes, you did.</b>
13:00	3 <b>A. Yes.</b>	3	Q. So as part of this e-mail, while he does not
13:00	4 Q. Okay. And you're aware that Mr. Gresham	4	reference Consilium, he does reference that he has
13:00	5 formally resigned from MHA on September 24th of 2012?	5	already received an offer for a new and exciting
13:00	6 <b>A. I don't know when he resigned.</b>	6	endeavor?
13:00	7 <b>(Exhibit No. 12 marked.)</b>	7	<b>A. I don't know. I don't know what he was --</b>
13:00	8 <b>(Discussion off the written record.)</b>	8	Q. I'm just --
13:00	9 Q. (BY MS. NOWAK) Mr. Bowden, I'm going to	9	<b>A. -- talking about.</b>
13:00	10 represent to you that this is a copy of Mr. Gresham's	10	Q. -- asking is that what the text states?
13:00	11 resignation e-mail that he sent to his supervisor at	11	<b>A. That he's received an offer that he cannot</b>
13:00	12 MHA.	12	<b>refuse.</b>
13:00	13 You would agree with me that the date of this	13	Q. Okay. So as of September 24th, he's
13:00	14 e-mail is Monday, September 24th?	14	representing that he's received some type of offer?
13:00	15 <b>A. I agree.</b>	15	<b>A. Some offer.</b>
13:00	16 Q. And you would also agree with me that	16	Q. And you would agree with me that by the time
13:00	17 September 24th is approximately seven days after you and	17	September 24th rolls around, that Mr. Gresham was
13:00	18 Mr. Gresham communicated, and you agreed that you would	18	already seeking employment at Consilium?
13:00	19 put him in touch with Ms. Stephens?	19	<b>A. I don't know. I know that he's talked to</b>
13:00	20 <b>A. Yes.</b>	20	<b>Christina at that point.</b>
13:00	21 Q. Okay. And you would also agree with me that	21	Q. Okay. So was it your impression by that date
13:00	22 by the time this date, September 24th, rolled around,	22	that he was already seeking employment?
13:00	23 that Mr. Gresham had already communicated with you,	23	<b>A. I don't know. I don't know if he had an offer</b>
13:00	24 talked with Ms. Stephens, and had also come in for an	24	<b>from someone else. I honestly don't know.</b>
13:00	25 interview at Consilium?	25	Q. What was the intent or import of you putting

Billy Jess Bowden

	106	108
13:13	1 him in contact with Ms. Stephens? It was to discuss	1 September 4th -- excuse me -- September 24th; is that
13:13	2 potential job opportunities at Consilium, correct?	2 correct?
13:13	3 <b>A. At some point, yes.</b>	3 <b>A. Correct.</b>
13:13	4 Q. Okay.	4 Q. Now, in light of the discussion we've been
13:13	5 (Exhibit No. 13 marked.)	5 having about the events that occurred between
13:14	6 Q. (BY MS. NOWAK) Mr. Bowden, can you identify	6 September 17th and September 24th, is it still your
13:14	7 this exhibit?	7 testimony here today that the second sentence of
13:14	8 <b>A. It says the Responses to Plaintiff's First Set</b>	8 Interrogatory No. 4 is accurate?
13:14	9 <b>of Interrogatories.</b>	9 <b>A. Being that I don't know what was spoken with</b>
13:14	10 Q. Have you reviewed this document before?	10 <b>Christina and Scott, I don't know the exact dates of</b>
13:14	11 <b>A. I think I have. I don't know. I've reviewed</b>	11 <b>when -- when he quit and when a job was offered.</b>
13:14	12 <b>a lot of documents.</b>	12 Q. So what was the basis for making this
13:14	13 Q. If you turn to Page 6 --	13 statement in the first instance, then?
13:14	14 <b>A. Uh-huh.</b>	14 <b>A. At the time, like I said, I couldn't recall</b>
13:14	15 Q. -- there's a verification attached to this	15 <b>until -- the exact dates that everything was done in at</b>
13:14	16 document. Is that your signature?	16 <b>that time.</b>
13:14	17 <b>A. Yes, it is.</b>	17 Q. Okay. But it is your recollection here today,
13:14	18 Q. Can you turn back with me to Page 3 of this	18 as you've already testified, that, in fact, Mr. Gresham
13:14	19 document.	19 and you spoke about his possibly seeking employment at
13:14	20 <b>A. Yes.</b>	20 Consilium prior to September 24th?
13:14	21 Q. And if you'll look about midway down the page	21 <b>A. That's correct.</b>
13:14	22 to Interrogatory No. 4, and the interrogatory is	22 Q. Are there any other inaccuracies in any of
13:14	23 requesting the date and all individuals who participated	23 your interrogatory responses?
13:14	24 or were involved in any meetings or communications	24 <b>A. Not that I know of.</b>
13:18	25 between you and Gresham prior to the termination of his	25 Q. Can we turn to Interrogatory No. 7, which is
	107	109
13:13	1 employment with MHA.	1 going to be on Page 4.
13:13	2 And your response to this interrogatory is,	2 <b>A. (Witness complies.)</b>
13:13	3 Gresham contacted defendant in mid September of 2012.	3 Q. And I want to focus on your answer here to
13:13	4 Did I read that correctly?	4 Interrogatory No. 7.
13:13	5 <b>A. Correct.</b>	5 The first sentence of Interrogatory 7 says,
13:13	6 Q. And the reference to defendant here is to	6 Defendant inquired about employment with Consilium in
13:13	7 yourself --	7 July 2012.
13:13	8 <b>A. Okay.</b>	8 Did I read that correctly?
13:13	9 Q. -- is that correct?	9 <b>A. That's correct.</b>
13:13	10 <b>A. Uh-huh.</b>	10 Q. And does defendant in this sentence refer to
13:13	11 Q. Okay. As --	11 you, Mr. Bowden?
13:13	12 MR. VOLNEY: Answer yes.	12 <b>A. Yes.</b>
13:13	13 <b>A. Yes. I'm sorry.</b>	13 Q. And is this an accurate statement?
13:13	14 MS. NOWAK: Thank you, John.	14 <b>A. That I inquired about employment?</b>
13:13	15 Q. (BY MS. NOWAK) And then the next -- the	15 Q. Yes.
13:13	16 second sentence reads, As defendant recalls, Gresham	16 <b>A. Yes.</b>
13:13	17 resigned his employment with MHA before seeking	17 Q. The testimony that you gave earlier today was
13:13	18 employment at Consilium.	18 that Ms. Stephens reached out and engaged you.
13:13	19 <b>A. Correct.</b>	19 <b>A. Right. And I -- I did --</b>
13:13	20 Q. And again, defendant in this sentence refers	20 Q. So --
13:13	21 to you?	21 <b>A. -- inquire.</b>
13:13	22 <b>A. Yes.</b>	22 Q. -- which is it?
13:13	23 Q. Now, we've just been over the -- the timing of	23 <b>A. She reached out to me and I reached out to</b>
13:13	24 Mr. Gresham's communication to you on September 2- --	24 <b>her.</b>
13:13	25 excuse me -- on September 17th and his resignation on	25 Q. So does this Interrogatory No. 7 disclose that

Billy Jess Bowden

	110	112
13:18	1 initial communication between yourself and Ms. Stephens,	1 Q. And what did you tell him?
13:18	2 then? Is this an incomplete response?	2 A. No.
13:18	3 A. I would say it's probably incomplete.	3 Q. Did you tell him anything else besides no?
13:18	4 Q. Okay. Besides Mr. Gresham, have you	4 A. I really didn't want to talk to him.
13:18	5 communicated with any other MHA employees or	5 Q. And why is that?
13:18	6 AMN Healthcare employees since you left MHA?	6 A. I just didn't really have anything to talk to
13:18	7 A. Yes.	7 him about.
13:18	8 Q. Who?	8 Q. Is that because you're not a fan of
13:18	9 A. I -- I don't remember everyone. I know I've	9 Mr. Dodson?
13:18	10 talked to people since I've left, but I don't remember	10 A. I don't really know Kevin very well.
13:18	11 exactly who.	11 Q. Okay. So what's the difference -- why were
13:18	12 Q. Okay. Well, let's look back at your	12 you willing to introduce or -- or set Mr. Gresham up
13:18	13 interrogatory responses again. And actually, if you'll	13 with Christina Stephens, but not Mr. Dodson?
13:18	14 look with me on Page 3, at the top of Page 3, you'll see	14 A. I just really didn't know Mr. Dodson very
13:18	15 your answer to Interrogatory No. 3.	15 well.
13:18	16 A. Uh-huh.	16 Q. You also have a number of other folks included
13:18	17 Q. And in that answer, about three lines in, you	17 here, including Mike Fay. How do you know Mike Fay?
13:19	18 identify a number of persons starting with	18 A. He's the trainer at Merritt Hawkins.
13:19	19 Mr. Scott Gresham.	19 Q. Did you spend quite a bit of time with him
13:19	20 Do you see where I am looking?	20 when you first started at --
13:19	21 A. Yes.	21 A. Yes.
13:19	22 Q. Can you tell me, who is Elizabeth Kamhieh?	22 Q. -- Merritt Hawkins?
13:19	23 A. She's someone I worked with at MHA.	23 Was he actually personally involved in the
13:19	24 Q. Okay. And what did you speak with Elizabeth	24 training that you received from Merritt Hawkins?
13:19	25 about?	25 A. He's the trainer.
	111	113
13:19	1 A. We talked -- she's in Indiana now. She'd left	1 Q. So talk me through, what are -- what are some
13:19	2 MHA.	2 of the exercises or things that you went through with
13:19	3 Q. When did you speak with Elizabeth?	3 Mr. Fay when you onboarded at MHA?
13:19	4 A. I don't know. Sometime within the last year.	4 A. We did call clinics.
13:19	5 Q. At any point in time during your	5 Q. Okay. What is a call clinic?
13:19	6 communications or conversations with Elizabeth, was	6 A. Where you talk to a doctor and they -- you
13:19	7 there any discussion of your work at Consilium?	7 record it and they critique it.
13:19	8 A. I just told her I was with Consilium, yes.	8 Q. Okay. Anything else?
13:19	9 Q. Was there any inquiry on her part or statement	9 A. I don't really remember. I did spend some
13:20	10 on yours that Consilium was hiring or looking for new	10 time with him, though.
13:20	11 folks?	11 Q. Okay. A number of months?
13:20	12 A. No.	12 A. Uh-huh, yes.
13:20	13 Q. So at any point in time, are you -- did	13 Q. John's better at catching those than I am.
13:20	14 Elizabeth talk with or interview with Consilium related	14 You also have listed here a Mr. Javier -- and
13:20	15 to potential employment opportunities?	15 I will not be able to pronounce his last name.
13:20	16 A. No.	16 A. Vivanco.
13:20	17 Q. Okay. Let's look at that next name,	17 Q. Okay. And how do you know Mr. Vivanco?
13:20	18 Kevin Dodson. Who's Mr. Dodson?	18 A. We worked together at MHA.
13:20	19 A. He works at MHA.	19 Q. And you've talked to him in the last year?
13:20	20 Q. And when have you spoken with or communicated	20 A. I can't remember the last time I talked to
13:20	21 with Mr. Dodson?	21 him. It's been probably longer than that.
13:20	22 A. Sometime within the last year.	22 Q. Okay. What about Brandon Schmidt?
13:20	23 Q. And what was the substance of your	23 A. I talked to him -- well, not really talked.
13:20	24 communication with Mr. Dodson?	24 Just he'll send me a text every now and then with a
13:20	25 A. He asked me if we were hiring.	25 funny quote or something.

30 (Pages 114 to 117)

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	118	120
13:24	1 Q. Yes.	1 you agree with me that that list is confidential, that
13:24	2 <b>A. Oh, I can't think of anything.</b>	2 Consilium considers it confidential?
13:24	3 Q. Okay. So you think that you've told me all	3 <b>A. Not really.</b>
13:24	4 the communications?	4 Q. Okay. So can I have a copy of that list?
13:24	5 <b>A. (Witness nods head.)</b>	5 <b>A. I don't -- I don't know. I don't know. That</b>
13:24	6 Q. We briefly touched earlier on the fact that	6 <b>would be up to Consilium. I don't know.</b>
13:27	7 Consilium has a database that it uses to store client	7 Q. My question is more to the point of to your
13:27	8 information in, and that that database is called Blue	8 knowledge, Consilium wouldn't have a problem with
13:27	9 Sky.	9 anybody viewing its client list because it doesn't
13:27	10 And can you confirm, do you have access to	10 consider that to be confidential. Is that what you're
13:27	11 Blue Sky?	11 saying here today?
13:27	12 <b>A. Yes.</b>	12 <b>A. Client lists are -- are probably considered</b>
13:25	13 Q. Is Blue Sky password protected?	13 <b>confidential.</b>
13:25	14 <b>A. It is.</b>	14 Q. Client lists probably are considered
13:25	15 Q. So just -- not just anybody can roll in off	15 confidential?
13:25	16 the street and see what's in it?	16 <b>A. Yes. I don't know.</b>
13:25	17 <b>A. No.</b>	17 Q. So it's -- but it's not published on the
13:25	18 Q. What type of information is contained in Blue	18 internet?
13:25	19 Sky?	19 <b>A. No.</b>
13:25	20 <b>A. Clients, potential clients, doctors that we</b>	20 Q. I would have to go to Consilium and request it
13:25	21 <b>work with.</b>	21 to be able to find what is in the client list?
13:25	22 Q. And when you say potential clients, would	22 <b>A. Yes.</b>
13:25	23 those be Consilium's prospects, the folks that they're	23 Q. What do you think would happen if a copy of
13:25	24 trying to get to become clients?	24 Consilium's client list was given to or fell into the
13:25	25 <b>A. Yes.</b>	25 hands of a competitor? Do you think that would hurt
	119	121
13:25	1 Q. Would it have a list or information about the	1 Consilium?
13:25	2 names of the employees who had contacted those clients	2 <b>A. Well, most competitors are working with the</b>
13:25	3 or potential clients?	3 <b>same clinics and everything. So it could probably hurt.</b>
13:25	4 <b>A. Yes.</b>	4 <b>But I mean, we're all competing for the same -- the same</b>
13:25	5 Q. So if we were to go in and to access Blue Sky	5 <b>amount of -- of things. It doesn't mean that they're</b>
13:25	6 and I was looking over your shoulder, we would be able	6 <b>going to get the business from them.</b>
13:28	7 to tell who had contacted a specific client on behalf of	7 Q. No. And that's not what my question was. I
13:28	8 Consilium?	8 wasn't inquiring who would ultimately get the business.
13:28	9 <b>A. If they put the information in there, yes.</b>	9 <b>A. Right.</b>
13:28	10 Q. Would it also tell us the bill rate or the pay	10 Q. I was just asking do you think there would be
13:28	11 rate that was associated with a specific placement?	11 an impact -- a harmful impact on Consilium if somebody
13:28	12 <b>A. Not that I know of.</b>	12 printed out its entire client list and walked it across
13:28	13 Q. Okay. What about the days filled?	13 the street to a competitor?
13:28	14 <b>A. Not that I know of. I don't deal in that</b>	14 <b>A. Those competitors are probably calling the</b>
13:28	15 <b>capacity.</b>	15 <b>same lists.</b>
13:28	16 Q. Okay. So you -- your understanding of Blue	16 Q. And that includes the same contact people that
13:28	17 Sky is fairly limited. You focus on the client list and	17 are included in Consilium's --
13:28	18 the notes associated with the client list?	18 <b>A. Yes.</b>
13:28	19 <b>A. Yes.</b>	19 Q. -- client list?
13:28	20 Q. So you're not saying that Blue Sky doesn't	20 Are you able to print information from Blue
13:28	21 have the capability. You are just saying --	21 Sky?
13:28	22 <b>A. I don't know.</b>	22 <b>A. I don't know.</b>
13:28	23 Q. -- you don't deal with it?	23 Q. Okay. What about running reports, do you know
13:28	24 <b>A. (Witness nods head.)</b>	24 anything about that?
13:28	25 Q. With respect to Consilium's client list, would	25 <b>A. I don't know.</b>



32 (Pages 122 to 125)

33 (Pages 126 to 129)

14:03 1 **A. There is, yes.**

14:03 2 Q. Okay.

14:03 3 **A. But my specific job wasn't.**

14:03 4 Q. Okay. So the experience you got from them for

14:03 5 recruiting was on the business development side of

14:04 6 healthcare?

14:04 7 **A. Yes. I was doing business development,**

14:04 8 **bringing in new clinics and stuff like that. I never**

14:04 9 **recruited.**

14:04 10 Q. Does it still go to healthcare staffing? I

14:04 11 mean, the ultimate purpose of you doing your business

14:04 12 development is make a match, correct, between a client

14:04 13 and a healthcare professional?

14:02 14 **A. That's the goal. But I don't do any of the**

14:02 15 **recruiting side of it.**

14:02 16 Q. Okay. But I guess I'm just trying to define

14:02 17 the -- the -- the industry overall. We're talking about

14:02 18 healthcare staffing?

14:02 19 **A. It's healthcare -- it's the healthcare**

14:02 20 **staffing industry.**

14:02 21 Q. Okay. And if we were to use that term

14:02 22 instead, healthcare staffing, we would be talking about

14:02 23 MHA, Merritt -- sorry -- MHA, Martin Fletcher, and

14:02 24 Consilium. They would fall kind of under that --

14:02 25 **A. Staffing agencies.**

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1 Q. -- large umbrella of healthcare --

2 A. **Or just staffing.**

3 Q. Got it. Okay.

4 MR. VOLNEY: Do you want to mark that

5 one?

6 MS. NOWAK: We certainly can, yeah, if

7 you've already given him a copy.

8 (Exhibit No. 15 marked.)

9 Q. (BY MS. NOWAK) I'd actually like for you to

10 go back -- we -- we looked at this employee contact list

11 earlier and marked that. And you had circled some of

12 these folks.

13 A. **Yes.**

14 Q. Okay. Now, your testimony earlier, I had

15 asked you if you knew any of these people during the

16 time that you were employed by MHA. And you identified

17 four individuals. You said Kyle Etter, Lyndsey Nix,

18 Landon Webb, and Amy Crowdis.

19 Is there anybody that you'd like to add to

20 that list?

21 A. **That I knew?**

22 Q. Yes.

23 A. **Oh, Greg Ellis.**

24 Q. Okay. And did you know Greg well?

25 A. **I probably knew Greg better than I knew any of**

1 the other ones.

2 Q. Okay. And when you say you probably knew him

3 better, how well did you know him?

4 A. **He had my paycheck every Friday.**

5 Q. So he was a good guy to know?

6 A. **(Witness nods head.)**

7 Q. And what does he do for Consilium? Does he

8 have your paycheck every Friday?

9 A. **The payroll man.**

10 Q. Does he deliver on time?

11 A. **Always.**

12 Q. So now that we've added to this list and you

13 have reminded yourself that you also knew Mr. Ellis, is

14 there anybody else that you'd like to add at this time?

15 A. **That is all.**

16 Q. Okay.

17 MS. NOWAK: Mr. Bowden, those are going

18 to be all the questions that I have for you today.

19 Now, I do want to remind you and

20 Mr. Volney that I am reserving my right to ask

21 additional questions about the documents I've just



22 received. And I think we've even identified a few more

23 that you either have access to or potentially have in

24 your possession that might be forthcoming and being

25 produced to me.

Billy Jess Bowden

<p>14:04 1 MR. VOLNEY: I guess I will say that the</p> <p>14:04 2 documents that I handed to you mid day today are largely</p> <p>14:04 3 duplicates of items you already had. And I -- I think</p> <p>14:05 4 I've given you the opportunity to look at them. But I</p> <p>14:05 5 hear what you're saying. So let's -- let's move on.</p> <p>14:05 6 MS. NOWAK: Thank you, Mr. Bowden.</p> <p>14:05 7 THE WITNESS: Thank you.</p> <p>14:05 8 THE VIDEOGRAPHER: We are off the record.</p> <p>14:05 9 MR. VOLNEY: Thank you.</p> <p>14:05 10 THE VIDEOGRAPHER: The time is 2:05 p.m.</p> <p>11 (Deposition adjourned at 2:05 p.m.)</p>	<p>134</p>	<p>1 _____</p> <p>2 (Signature of the witness)</p> <p>3</p> <p>4 THE STATE OF _____</p> <p>5 COUNTY OF _____</p> <p>6</p> <p>7 Subscribed and sworn to before me by the said</p> <p>8 witness, BILLY JESS BOWDEN, on this the _____ day</p> <p>9 of _____, 2014.</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13 Notary Public in and for the</p> <p>14 State of _____</p> <p>15 County of _____</p> <p>16 My commission expires: _____</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>136</p>
<p>1 DEPOSITION CHANGES</p> <p>2 WITNESS: BILLY JESS BOWDEN</p> <p>3 PAGE NO. LINE NO. CHANGE REASON FOR CHANGE</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p>135</p>	<p>1 STATE OF TEXAS )</p> <p>2 COUNTY OF DALLAS )</p> <p>3</p> <p>4 I, Lezley Cull, Certified Shorthand Reporter</p> <p>5 in and for the State of Texas, certify that the</p> <p>6 foregoing deposition of BILLY JESS BOWDEN was reported</p> <p>7 stenographically by me at the time and place indicated,</p> <p>8 said witness having been placed under oath by me, and</p> <p>9 that the deposition is a true record of the testimony</p> <p>10 given by the witness.</p> <p>11 I further certify that I am neither counsel</p> <p>12 for nor related to any party in this cause and am not</p> <p>13 financially interested in its outcome.</p> <p>14 Given under my hand on this the _____ day</p> <p>15 of _____, 2014.</p> <p>16</p> <p>17  </p> <p>18 Lezley Cull, Texas CSR 5528</p> <p>19 Expiration Date: 12/31/15</p> <p>20 DepoTexas, Firm Registration #459</p> <p>21 Sunbelt Reporting, Firm Registration #301</p> <p>22 6500 Greenville Avenue</p> <p>23 Suite 445</p> <p>24 Dallas, Texas 75206</p> <p>25 214-373-4977</p> <p>Original deposition sent to Mr. John Volney on _____ for signature.</p>	<p>137</p>

Larry Scott Gresham

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MERRITT HAWKINS	)	
& ASSOCIATES, LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 3:13-cv-00312-P
LARRY SCOTT GRESHAM	)	
AND BILLY BOWDEN	)	
	)	
Defendants.	)	

\*\*\*\*\*  
ORAL AND VIDEOTAPED DEPOSITION OF  
LARRY SCOTT GRESHAM  
FEBRUARY 13, 2014  
\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION of  
LARRY SCOTT GRESHAM, produced as a witness at the  
instance of the Plaintiff, and duly sworn, was taken in  
the above-styled and numbered cause on the 13th of  
February, 2014, from 10:00 a.m. to 2:55 p.m., before  
Lezley Cull, CSR in and for the State of Texas, reported  
by machine shorthand, at the offices of Lynn Tillotson  
Pinker & Cox, LLP, 2100 Ross Avenue, Suite 2700, Dallas,  
Texas, pursuant to the Texas Rules of Civil Procedure  
and the provisions stated on the record or attached  
hereto.

Larry Scott Gresham

	<b>2</b>	<b>4</b>
	<p>1                   A P P E A R A N C E S</p> <p>2</p> <p>3       FOR THE PLAINTIFF:</p> <p>4           Ms. Christine A. Nowak</p> <p>5           DYKEMA GOSSETT PLLC</p> <p>6           1717 Main Street</p> <p>7           Suite 4000</p> <p>8           Dallas, Texas 75201</p> <p>9           214.462.6400</p> <p>10          214.462.6401 (fax)</p> <p>11          cnowak@dykema.com</p> <p>12</p> <p>13       FOR THE DEFENDANTS:</p> <p>14           Mr. John Volney</p> <p>15           LYNN TILLOTSON PINKER COX</p> <p>16           2100 Ross Avenue</p> <p>17           Suite 2700</p> <p>18           Dallas, Texas 75201</p> <p>19           214.981.3822</p> <p>20           214.891.3839 (fax)</p> <p>21           jvolney@lynnllp.com</p> <p>22</p> <p>23       ALSO PRESENT:</p> <p>24           Randy Johnson - Videographer</p> <p>25           Whitney Laughlin</p>	<p>1       EXHIBITS CONTINUED</p> <p>2       Exhibit 25 - Defendant Larry Scott Gresham's</p> <p>3           Answer to Plaintiff's Original</p> <p>4           Complaint and Original</p> <p>5           Counterclaim. . . . . 175</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23       REPORTER'S NOTE - "*" denotes previously marked exhibit</p> <p>24</p> <p>25</p>
10:00	<b>3</b>	<b>5</b>
10:00	<p>1                   I N D E X</p> <p>2       Appearances. . . . . 2</p> <p>3</p> <p>4       LARRY SCOTT GRESHAM</p> <p>5           Examination by Ms. Nowak. . . . . 5, 205</p> <p>6           Examination by Mr. Volney. . . . . 184</p> <p>7</p> <p>8       DEPOSITION EXHIBITS                               PAGE</p> <p>9       Exhibit 3 - Document printed from</p> <p>10          Consilium Staffing's website. . . 43</p> <p>11       Exhibit 9 - BOWDEN 000056. . . . . 145</p> <p>12       Exhibit 11 - GRESHAM 000001. . . . . 110</p> <p>13       Exhibit 12 - 9-24-12 resignation e-mail from</p> <p>14          Scott Gresham to Tim Beidle. . . 52</p> <p>15</p> <p>16       Exhibit 16 - Notice of Deposition. . . . . 8</p> <p>17</p> <p>18       Exhibit 17 - Defendant Larry Scott Gresham's</p> <p>19          Responses to Plaintiff's First</p> <p>20          Requests for Production. . . . . 13</p> <p>21</p> <p>22       Exhibit 18 - Photocopies of a text messages. . . 16</p> <p>23</p> <p>24       Exhibit 19 - Confidentiality, Non-Competition</p> <p>25          and Non-Solicitation Agreement. . . 62</p> <p>Exhibit 20 - GRESHAM 000020- GRESHAM 000022,</p> <p>          GRESHAM 000037 - GRESHAM 000051. . 76</p> <p>Exhibit 21 - GRESHAM 000013. . . . . 124</p> <p>Exhibit 22 - GRESHAM 000007 - GRESHAM 000009. . 126</p> <p>Exhibit 23 - GRESHAM 000010 - GRESHAM 000012. . 132</p> <p>Exhibit 24 - Defendant Larry Scott Gresham's</p> <p>Responses to Plaintiff's First</p> <p>Requests for Admission. . . . . 161</p>	<p>1                   P R O C E E D I N G S</p> <p>2       THE VIDEOGRAPHER: We are now on the</p> <p>3       record for the video deposition of Larry Scott Gresham.</p> <p>4       The time is 10:00 o'clock. The date is February 13th,</p> <p>5       2014 in the matter of Merritt Hawkins &amp; Associates, LLC</p> <p>6       versus Larry Scott Gresham, et al., Civil Action</p> <p>7       No. 3:13-CV-00312-P, being held in the United States</p> <p>8       District Court for the Northern District of Texas,</p> <p>9       Dallas Division.</p> <p>10       The court reporter is Lezley Cull and the</p> <p>11       videographer is Randy Johnson. Both are representatives</p> <p>12       of DepoTexas.</p> <p>13       Will counsel please state their</p> <p>14       appearances for the record.</p> <p>15       MS. NOWAK: Christine Nowak, counsel for</p> <p>16       plaintiff Merritt Hawkins &amp; Associates.</p> <p>17       MR. VOLNEY: John Volney for the witness.</p> <p>18       THE VIDEOGRAPHER: Would the court</p> <p>19       reporter please administer the oath.</p> <p>20       LARRY SCOTT GRESHAM,</p> <p>21       having been first duly sworn, testified as follows:</p> <p>22                   E X A M I N A T I O N</p> <p>23       BY MS. NOWAK:</p> <p>24           Q. Good morning, Mr. Gresham. How are you today?</p> <p>25           A. Good.</p>

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Larry Scott Gresham

<p>110:01 110:02 110:03 110:04 110:05 110:06 110:07 110:08 110:09 110:10 110:11 110:12 110:13 110:14 110:15 110:16 110:17 110:18 110:19 110:20 110:21 110:22 110:23 110:24 110:25</p>	<p style="text-align: right;">6</p> <p>1 Q. Can you please state your full name for the</p> <p>2 record.</p> <p>3 <b>A. Larry Scott Gresham.</b></p> <p>4 Q. Now, do you go by Larry?</p> <p>5 <b>A. No, I do not. I go by Scott.</b></p> <p>6 Q. Can you please tell me your current</p> <p>7 residential address.</p> <p>8 <b>A. Sure. 824 Kilbridge Lane, Coppell, Texas</b></p> <p>9 <b>75019.</b></p> <p>10 Q. Can you also tell me your current e-mail</p> <p>11 address.</p> <p>12 <b>A. Sure. Scott.gresham@verizon.net.</b></p> <p>13 Q. How long have you had that e-mail address?</p> <p>14 <b>A. I don't recall. A long time.</b></p> <p>15 Q. Have you had any other e-mail addresses since</p> <p>16 2012?</p> <p>17 <b>A. A Gmail address through my company.</b></p> <p>18 Q. Can you please give me that address?</p> <p>19 <b>A. Pipthebunny@gmail.com.</b></p> <p>20 Q. Did you also have work e-mail addresses during</p> <p>21 that time?</p> <p>22 <b>A. I did. I do not recall what they were.</b></p> <p>23 Q. Can you please give me a current phone number.</p> <p>24 <b>A. Sure. 972-537-7611.</b></p> <p>25 Q. And you understand you're here today for a</p>	<p style="text-align: right;">8</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And if I refer to AMN today, you'll understand</p> <p>3 that I'm talking about the family of companies that</p> <p>4 includes MHA?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. You understand that you are a named defendant</p> <p>7 in this lawsuit?</p> <p>8 <b>A. Yes.</b></p> <p>9 <b>(Discussion off the written record.)</b></p> <p>10 <b>(Exhibit No. 16 marked.)</b></p> <p>11 Q. (BY MS. NOWAK) Mr. Gresham, have you seen</p> <p>12 this notice before?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And are you appearing here today pursuant to</p> <p>15 this notice?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Have you ever been deposed before?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Have you ever been a party to a lawsuit</p> <p>20 before?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Can you tell me what that was.</p> <p>23 <b>A. Merritt Hawkins sued Arthur Marshall two and a</b></p> <p>24 <b>half years ago maybe when I went from Merritt Hawkins to</b></p> <p>25 <b>Arthur Marshall. And then Arthur Marshall sued</b></p>
<p>110:02 110:03 110:04 110:05 110:06 110:07 110:08 110:09 110:10 110:11 110:12 110:13 110:14 110:15 110:16 110:17 110:18 110:19 110:20 110:21 110:22 110:23 110:24 110:25</p>	<p style="text-align: right;">7</p> <p>1 deposition in a lawsuit filed by Merritt</p> <p>2 Hawkins &amp; Associates?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And if I use the term MHA today, will you</p> <p>5 understand that I'm referring to Merritt Hawkins --</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. -- &amp; Associates?</p> <p>8 And we'll get to this in a little bit. But</p> <p>9 one of the things that we have today is a court</p> <p>10 reporter. She's going to be taking down what you say</p> <p>11 and what I say. And for that reason, we have to make</p> <p>12 sure that we don't talk over each other. So if you'll</p> <p>13 let me get my question out and I'll try to let you get</p> <p>14 your answers out before either of the other one of us</p> <p>15 talks.</p> <p>16 <b>A. Sure.</b></p> <p>17 Q. And the other thing, because we have a court</p> <p>18 reporter here with us today, we'll need to make sure</p> <p>19 that we give verbal answers. So if you can respond with</p> <p>20 a yes or a no as opposed to a huh-uh or a head nod</p> <p>21 because that's not something that Lezley can take down.</p> <p>22 <b>A. Sure.</b></p> <p>23 Q. As far as other terms, if I were to use the</p> <p>24 term AMN Healthcare, are you familiar with AMN</p> <p>25 Healthcare?</p>	<p style="text-align: right;">9</p> <p>1 <b>Merritt Hawkins when I went back to Merritt Hawkins.</b></p> <p>2 Q. Was there a noncompete involved in that case?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Do you remember where that case was filed?</p> <p>5 <b>A. No. I didn't have much to do with that</b></p> <p>6 <b>case -- with either case.</b></p> <p>7 Q. Were you deposed --</p> <p>8 <b>A. No.</b></p> <p>9 Q. -- in the case?</p> <p>10 <b>A. I'm sorry I was talking over you.</b></p> <p>11 <b>No.</b></p> <p>12 Q. Do you know what the end result of the</p> <p>13 litigation was?</p> <p>14 <b>A. To what I recall, the case between Merritt</b></p> <p>15 <b>Hawkins and Arthur Marshall when Merritt Hawkins sued</b></p> <p>16 <b>Arthur Marshall, they just -- they settled that I</b></p> <p>17 <b>wouldn't work in the same territories. And I do not</b></p> <p>18 <b>know what the resolution on the other case was. I don't</b></p> <p>19 <b>think it went anywhere.</b></p> <p>20 Q. Other than this case involving MHA and Arthur</p> <p>21 Marshall which you were a party to, have you ever been a</p> <p>22 party to a litigation matter?</p> <p>23 <b>A. No.</b></p> <p>24 Q. You've never been sued?</p> <p>25 <b>A. No.</b></p>

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<p>10:09 1 10:09 2 10:09 3 10:09 4 10:09 5 10:09 6 10:09 7 10:09 8 10:09 9 10:09 10 10:09 11 10:09 12 10:10 13 10:10 14 10:10 15 10:10 16 10:10 17 10:10 18 10:10 19 10:10 20 10:10 21 10:10 22 10:10 23 10:10 24 10:10 25</p>	<p style="text-align: right;"><b>14</b></p> <p><b>1 I remember it was my hard drive. I think there was a</b> <b>2 USB connected to it -- or no. I think it was another</b> <b>3 hard drive. He just took both of those.</b> Q. So is it your testimony here today that the computer expert did not take possession of any USB drives? <b>A. I do not recall him taking possession of any</b> <b>4 USB drives.</b> Q. But it's possible that he did? <b>A. It's possible, yeah. I don't remember.</b> Q. So did you go through any of your personal e-mail, work e-mail addresses, or is the only effort you took to collect documents handing over your computer hard drive? <b>A. Yes. I had -- I didn't have work e-mail.</b> Q. Okay. Did you have a personal e-mail address? <b>A. Uh-huh.</b> Q. Did you review your personal e-mail to -- <b>A. No.</b> Q. -- to see if there were any documents responsive? <b>A. No. Because I gave the hard drive that had</b> <b>5 the e-mail account on it to him.</b> Q. And did you provide the password so they could review --</p>	<p style="text-align: right;"><b>16</b></p> <p><b>A. Okay.</b> Q. Do you understand? <b>A. I do understand.</b> Q. Okay. Did you go and request copies of documents from anyone else or did you only provide what was actually in your possession? <b>A. I only provided what was in my possession. I</b> <b>6 wouldn't waste the time.</b> Q. Late yesterday afternoon, your counsel produced a text message to me. (Exhibit No. 18 marked.) MS. NOWAK: John, do you have a copy already? MR. VOLNEY: No. But I'm familiar with the document. MS. NOWAK: Okay. Q. (BY MS. NOWAK) When did you give this text message to your lawyer? <b>A. Yesterday.</b> Q. So this case was filed back in January of 2013, but you waited for over a year to give your lawyer a copy of this text message? <b>A. I honestly didn't even know I could go back</b> <b>7 that far in my text messages. And yesterday, I did. I</b> <b>8 said, oh, look, I can go -- yeah.</b></p>
<p>10:10 1 10:10 2 10:10 3 10:10 4 10:10 5 10:10 6 10:10 7 10:10 8 10:10 9 10:10 10 10:10 11 10:10 12 10:10 13 10:10 14 10:10 15 10:10 16 10:10 17 10:10 18 10:10 19 10:10 20 10:10 21 10:10 22 10:10 23 10:10 24 10:10 25</p>	<p style="text-align: right;"><b>15</b></p> <p><b>A. Yes.</b> Q. -- the e-mail? So as we sit here today, do you believe that you've produced all documents that are in your possession, custody -- <b>A. Yes.</b> Q. -- and control that are responsive to MHA's request? <b>A. Yes.</b> Q. Do you understand what I mean when I say possession, that you actually have hold of the document? <b>A. I absolutely understand what you mean.</b> Q. Okay. <b>A. Thank you.</b> Q. And I just want to make sure you understand. Do you also understand what I mean when I say custody or control? What does that mean to you? <b>A. I have it. I understand.</b> Q. Well, it can also mean that you have the ability to get a copy. So do you understand if I were to say that you had custody or control of something, that that would mean that you would have the ability to go and get a copy? You may not actually have it in your hands, but you could go and request a copy from someone else?</p>	<p style="text-align: right;"><b>17</b></p> <p>Q. So you're telling me today that the reason that we've only just received this document is because you didn't check to see if you had text messages? <b>A. Yes.</b> Q. And in his deposition, Mr. Bowden testified that he had a number of other text message strings with you besides the ones that were produced to me yesterday. Do you -- are you aware of any other text message strings that you have with Mr. Bowden? <b>A. Personal?</b> Q. Yes. <b>A. Sure.</b> Q. Okay. And have those been produced to me? <b>A. No.</b> Q. And why is it that those have not been produced to me? <b>A. They're of a personal nature.</b> Q. Are they communications between yourself and Mr. Bowden? <b>A. Yes. Billy's one of my friends.</b> Q. And do any of those communications relate in any way to this lawsuit? <b>A. No.</b> Q. Mr. Bowden testified that you had at least six to eight text message strings between you that related</p>

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<p>10:13 1 to this lawsuit.</p> <p>10:13 2 <b>A. Okay.</b></p> <p>10:13 3 Q. Is it your testimony here today that he was</p> <p>10:13 4 lying?</p> <p>10:13 5 <b>A. I don't know. I don't -- this is what I have.</b></p> <p>10:13 6 Q. Did you review the other text messages,</p> <p>10:13 7 though, to see if they were related?</p> <p>10:13 8 <b>A. No.</b></p> <p>10:13 9 Q. Do you still have copies of all of those text</p> <p>10:13 10 messages?</p> <p>10:13 11 <b>A. Uh-huh.</b></p> <p>10:13 12 MR. VOLNEY: Answer yes. Sorry.</p> <p>10:13 13 <b>A. Yes.</b></p> <p>10:13 14 Q. (BY MS. NOWAK) So you haven't destroyed them,</p> <p>10:13 15 you still have all of them --</p> <p>10:13 16 <b>A. No.</b></p> <p>10:13 17 Q. -- in your possession?</p> <p>10:13 18 <b>A. I have them.</b></p> <p>10:13 19 Q. And you have the ability to produce those to</p> <p>10:13 20 your lawyer, who can then provide them to me?</p> <p>10:13 21 <b>A. Sure.</b></p> <p>10:13 22 MR. VOLNEY: Assuming that they're</p> <p>10:13 23 responsive to your discovery requests.</p> <p>10:13 24 THE WITNESS: Exactly.</p> <p>10:13 25 Q. (BY MS. NOWAK) So in your discovery responses</p>	<p style="text-align: right;">18</p>	<p>1 clarification?</p> <p>2 <b>A. -- the point is I didn't have a work e-mail at</b></p> <p>3 <b>Consilium.</b></p> <p>4 Q. (BY MS. NOWAK) You're telling me, as we sit</p> <p>5 here today, that you never had a work e-mail with</p> <p>6 Consilium?</p> <p>7 <b>A. On -- on -- in December of 2013, I did not.</b></p> <p>8 MR. VOLNEY: That's the point.</p> <p>9 Q. (BY MS. NOWAK) But these requests were served</p> <p>10 in advance of December 2013. So why did you not look</p> <p>11 through your work e-mail?</p> <p>12 <b>A. Because I didn't have anything responsive to</b></p> <p>13 <b>the case in my work e-mail.</b></p> <p>14 Q. And why didn't you look through your personal</p> <p>15 e-mail?</p> <p>16 <b>A. I had nothing on there.</b></p> <p>17 Q. But you didn't look, did you?</p> <p>18 <b>A. No.</b></p> <p>19 Q. When you resigned --</p> <p>20 MR. VOLNEY: As the discovery requests</p> <p>21 made clear, I looked at his personal e-mail account that</p> <p>22 was captured by the forensic expert and produced the</p> <p>23 materials that I found in there that were responsive to</p> <p>24 your discovery requests.</p> <p>25 MS. NOWAK: I don't believe that the</p>
<p>10:13 1 when you advised that you had no responsive documents or</p> <p>10:13 2 had produced all responsive documents, that was</p> <p>10:13 3 incorrect?</p> <p>10:13 4 <b>A. I don't believe so.</b></p> <p>10:13 5 Q. Okay. But you didn't bother to go look at --</p> <p>10:13 6 <b>A. Right.</b></p> <p>10:13 7 Q. -- your text messages.</p> <p>10:13 8 Are there any other places you just didn't</p> <p>10:13 9 bother to go look?</p> <p>10:13 10 <b>A. No.</b></p> <p>10:13 11 Q. Did you go through all of your work e-mails to</p> <p>10:13 12 see if there was anything responsive or relevant?</p> <p>10:13 13 <b>A. I didn't have a work e-mail.</b></p> <p>10:13 14 Q. Okay. You did not have a work e-mail address</p> <p>10:13 15 with Consilium?</p> <p>10:13 16 <b>A. I did. There was nothing responsive.</b></p> <p>10:13 17 MR. VOLNEY: Hold on.</p> <p>10:13 18 When did you leave Consilium?</p> <p>10:13 19 THE WITNESS: I left Consilium</p> <p>10:13 20 September 21st maybe.</p> <p>10:13 21 MR. VOLNEY: 2013?</p> <p>10:13 22 THE WITNESS: 2013.</p> <p>10:13 23 MS. NOWAK: Is there a reason you're --</p> <p>10:13 24 <b>A. So --</b></p> <p>10:13 25 MS. NOWAK: -- asking for that</p>	<p style="text-align: right;">19</p>	<p>1 requests do make that clear. But if you are amending</p> <p>2 your responses via this record -- is that what you're</p> <p>3 doing, John?</p> <p>4 MR. VOLNEY: I'm -- I'm clarifying.</p> <p>5 MS. NOWAK: Okay.</p> <p>6 MR. VOLNEY: I think that is clear,</p> <p>7 but...</p> <p>8 Q. (BY MS. NOWAK) Mr. Gresham, when you left</p> <p>9 MHA, when you resigned, you sent an e-mail to Mr. --</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. -- Beidle; is that correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. What account did you send that e-mail from, do</p> <p>14 you recall? Did you send it from your work e-mail, did</p> <p>15 you send it from your personal e-mail?</p> <p>16 <b>A. I sent that from my home e-mail probably.</b></p> <p>17 Q. When you resigned from Consilium, did you send</p> <p>18 an e-mail to anyone?</p> <p>19 <b>A. I sent an e-mail to John. I don't remember</b></p> <p>20 <b>his last name. That's horrible. John Volney -- no, not</b></p> <p>21 <b>John Volney. I -- I don't remember the name. My boss,</b></p> <p>22 <b>John. I mean, this stuff is so far from me, that I'm in</b></p> <p>23 <b>a different life now.</b></p> <p>24 Q. But it's your testimony you did send an</p> <p>25 e-mail --</p>

6 (Pages 18 to 21)

7 (Pages 22 to 25)

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	26	28
10:29	1 Q. Did anyone tell you that it might happen?	1 A. No.
10:29	2 A. No. Those mean the same thing, but...	2 Q. So are you aware of the costs or fees paid to
10:29	3 Q. Did anyone tell you that Consilium was already	3 Lynn Tillotson to date in connection with this
10:29	4 involved in lawsuits with some of the AMN Healthcare	4 litigation?
10:29	5 family of companies?	5 A. Not at all.
10:29	6 A. With Staff Care, yes.	6 Q. Are you aware of any agreements in this case
10:29	7 Q. And who informed you of that?	7 that exist between your lawyers and Consilium, any --
10:29	8 A. I don't recall.	8 A. I am --
10:29	9 Q. Do you recall --	9 Q. -- joint defense agreements?
10:29	10 A. I mean, it was common knowledge.	10 A. I am not.
10:29	11 Q. Do you recall when it became common knowledge	11 Q. Are there any agreements in this case between
10:29	12 to you?	12 you and Consilium relating to your testimony?
10:29	13 A. I don't -- I don't remember.	13 A. No.
10:29	14 Q. Would it have been before or after you began	14 Q. Did they tell you there are certain things
10:29	15 working for Consilium?	15 that you should say?
10:29	16 A. After.	16 A. No.
10:29	17 Q. What are the terms of your engagement	17 Q. Certain things you shouldn't say?
10:29	18 agreement with Lynn Tillotson?	18 A. No.
10:29	19 A. I'm not -- I don't -- I don't retain them.	19 Q. Mr. Gresham, how old are you?
10:29	20 Q. Okay.	20 A. 37.
10:29	21 A. Consilium has them retained.	21 Q. Are you married?
10:29	22 Q. Do you have a letter or any type of fee	22 A. I am.
10:29	23 agreement whatsoever with Lynn Tillotson?	23 Q. Have any kids?
10:29	24 A. I do not.	24 A. Two.
10:29	25 Q. Have you signed any documents for Lynn	25 Q. Can you tell me where you went to high school.
	27	29
10:29	1 Tillotson?	1 A. Nacogdoches High School and San Marcos Baptist
10:29	2 A. I have not.	2 Academy.
10:29	3 Q. So you aren't paying any of the fees related	3 Q. Why the switch?
10:29	4 to this litigation out of your own pocket?	4 A. Military school.
10:29	5 A. No, not at this time.	5 Q. Why did you go to military school?
10:29	6 Q. Do you have any agreements with Consilium to	6 A. Because I thought I wanted to be in the
10:29	7 reimburse them for any fees that are paid on your	7 military.
10:29	8 behalf?	8 Q. Did you end up going into the military?
10:29	9 A. I do not.	9 A. I did not.
10:29	10 Q. So you've never paid a cent in legal fees?	10 Q. Are you from Nacogdoches?
10:29	11 A. For this, no.	11 A. I am.
10:29	12 Q. Okay. And you have no obligation to repay any	12 Q. I kind of want to walk from here just a little
10:29	13 legal fees in connection with this lawsuit?	13 bit through the rest of your educational background.
10:29	14 A. No.	14 So can you tell me after you graduated from
10:29	15 Q. Who informed you that Consilium would be	15 high school -- or did you actually graduate from high
10:29	16 paying your fees?	16 school?
10:29	17 A. It's never really even been talked about. I	17 A. I did.
10:29	18 mean, honestly, I just -- when we were sued, I came up	18 Q. And after high school, did you go on to
10:29	19 here, talked to everybody with Joe. And that's about	19 college?
10:29	20 it.	20 A. I did.
10:29	21 Q. So no one's ever specifically told you,	21 Q. And where did you go college?
10:29	22 Mr. Gresham, you won't have to pay your legal fees,	22 A. Stephen F. -- I went to a lot of colleges.
10:29	23 they'll be taken care of?	23 Stephen F. Austin State University --
10:29	24 A. No.	24 MR. VOLNEY: Be still.
10:29	25 Q. Have you ever seen any of the bills?	25 THE WITNESS: Oh, I'm sorry.

8 (Pages 26 to 29)

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		30		32
10:23	1	MR. VOLNEY: You're rocking.	1	<b>A. Decently.</b>
10:23	2	<b>A. Stephen F. Austin State University in</b>	2	Q. Okay. What do you mean by decently?
10:23	3	<b>Nacogdoches -- let's see -- University of Texas,</b>	3	<b>A. I can -- I can do okay with hardware, not</b>
10:23	4	<b>McAllen. It was McAllen. And then most recently,</b>	4	<b>software.</b>
10:23	5	<b>University of Phoenix just to finish my degree.</b>	5	Q. Okay. What do you mean, do okay with
10:23	6	Q. (BY MS. NOWAK) Okay. So did you receive a	6	hardware?
10:23	7	degree from SFA?	7	<b>A. Put a computer together.</b>
10:23	8	<b>A. No, I did not.</b>	8	Q. Okay. Are you familiar with World of
10:23	9	Q. What about the University of Texas in McAllen?	9	Warcraft?
10:23	10	<b>A. No.</b>	10	<b>A. Uh-huh.</b>
10:23	11	Q. What about the University of Phoenix?	11	Q. So I've been told that you're pretty good at
10:23	12	<b>A. No.</b>	12	World of Warcraft.
10:23	13	Q. So do you have a college degree?	13	<b>A. I was. I don't play video games anymore. But</b>
10:23	14	<b>A. I do not.</b>	14	<b>yeah, I played a lot before.</b>
10:23	15	Q. Are there any other colleges that you	15	Q. But you were able with World of Warcraft to
10:23	16	attended?	16	kind of rig up a system where it could keep playing for
10:23	17	<b>A. University of Texas at Tyler. I attended a</b>	17	you while you were still at work?
10:23	18	<b>lot of colleges. That may be it, but I can't...</b>	18	<b>A. Yes.</b>
10:23	19	Q. Okay. And no degree from the University of	19	Q. So you are pretty proficient with --
10:23	20	Texas at --	20	<b>A. No.</b>
10:24	21	<b>A. No.</b>	21	Q. -- programming --
10:24	22	Q. -- Tyler either?	22	<b>A. No, no --</b>
10:24	23	Okay. Do you have any other types of degrees,	23	Q. -- World of Warcraft?
10:24	24	perhaps not a college degree, but --	24	<b>A. -- not really.</b>
10:24	25	<b>A. No.</b>	25	THE REPORTER: Okay. I'm sorry. If
		31		33
10:24	1	Q. -- any licenses or professional associations?	1	you'll wait 'til she gets her whole question --
10:24	2	<b>A. No, not that I can think of right now.</b>	2	THE WITNESS: Sure.
10:24	3	Q. Do you maintain any websites?	3	THE REPORTER: -- out. I can only take
10:24	4	<b>A. No.</b>	4	one of you at a time.
10:24	5	Q. What about social media pages? Do you have a	5	THE WITNESS: I'm sorry.
10:25	6	LinkedIn profile?	6	THE REPORTER: That's okay. Thank you.
10:25	7	<b>A. I -- I have one. I could not tell you what</b>	7	<b>A. No. That's a program you buy and it does it</b>
10:25	8	<b>the user name and password is because I haven't used it</b>	8	<b>for you.</b>
10:25	9	<b>in probably a year and a half.</b>	9	Q. (BY MS. NOWAK) So you didn't have to do
10:25	10	Q. What about Facebook?	10	anything to it special to have it continue playing when
10:26	11	<b>A. My company has a Facebook page.</b>	11	you weren't actually there?
10:26	12	Q. Do you have a personal Facebook page?	12	<b>A. Not really, nothing more than anything you'd</b>
10:26	13	<b>A. I do. I don't use it.</b>	13	<b>see online. When you buy the program, it tells you how</b>
10:26	14	Q. And when you say you don't use it, do you mean	14	<b>to do it.</b>
10:26	15	you don't ever post on it or --	15	Q. Mr. Gresham, do you know what a USB drive is
10:26	16	<b>A. I don't ever log on to it.</b>	16	or a USB device?
10:26	17	Q. Do you have any others, Twitter accounts?	17	<b>A. Sure.</b>
10:26	18	<b>A. Maybe. I don't know.</b>	18	Q. Do you know how to use one?
10:26	19	Q. Do you have any hobbies, anything you do in	19	<b>A. Absolutely.</b>
10:26	20	your spare time?	20	Q. How many USBs do you think that you own?
10:26	21	<b>A. Take care of my kids.</b>	21	<b>A. I don't even -- I may own one or two now. I</b>
10:26	22	Q. Do anything like play video games?	22	<b>don't know if I own that many. I mean, the Cloud is way</b>
10:26	23	<b>A. No.</b>	23	<b>better than USB.</b>
10:26	24	Q. Okay. Do you consider yourself to be computer	24	Q. And do you recall how many you gave to your
10:26	25	savvy?	25	lawyer in connection with this lawsuit for him to

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	34		36
10:26	1 review?	1	Q. Okay. All right. Well, then why don't we
10:26	2 <b>A. I do not.</b>	2	walk through all of the -- the different jobs you've
10:26	3 Q. But you do understand that a number of MHA	3	had. And we'll cover the ones that kind of came in
10:26	4 documents were found on the USB hard drives that you	4	between or at the same time as your college experience,
10:26	5 provided to your lawyer?	5	as well.
10:26	6 <b>A. No, I do not.</b>	6	Were you working while you were attending SFA?
10:26	7 Q. You don't understand that there were MHA	7	<b>A. Yes.</b>
10:26	8 documents --	8	Q. Okay. And where were you working?
10:26	9 <b>A. On --</b>	9	<b>A. My dad owns a tombstone company, Clyde Partin</b>
10:26	10 Q. -- that you've produced in this case that were	10	<b>Monument Company.</b>
10:26	11 found on your personal hard drive and USB devices?	11	Q. And how long did you work for your father's
10:26	12 <b>A. On my hard drive, not USB devices.</b>	12	company?
10:26	13 Q. Did you ever connect a USB device to your MHA	13	<b>A. Let's see. I worked there 15 to 23. So</b>
10:29	14 computer?	14	<b>what's that? Eight years.</b>
10:29	15 <b>A. I did not.</b>	15	Q. And so what year would that have ended in?
10:29	16 Q. Did you have VPN access when you were at MHA	16	<b>A. That would have ended in -- but it was --</b>
10:29	17 virtual access --	17	<b>let's see. 15. It was like '93 to -- I would say '93</b>
10:29	18 <b>A. Yeah, VPN.</b>	18	<b>to '99.</b>
10:29	19 Q. -- where you could log in remotely?	19	Q. And did you have any other employment during
10:29	20 <b>A. I think Tom gave it to me. I never used it.</b>	20	the time that you were working for your dad's tombstone
10:29	21 Q. So you never logged in remotely while you were	21	company or was that your primary employment?
10:29	22 at home to the office computers?	22	<b>A. That was my primary. I worked at other -- I</b>
10:29	23 <b>A. No.</b>	23	<b>worked at, like, Arby's when I was in high school and</b>
10:29	24 Q. Okay. We've walked through your employment	24	<b>stuff like that. But that was my primary employment.</b>
10:29	25 background. Let's kind of do the same thing with your	25	Q. And from 1999 when you left your father's
	35		37
10:29	1 work experience.	1	company, where did you work next?
10:29	2 So you've told me that you graduated from	2	<b>A. Let's see. I was a welder. I cannot recall</b>
10:29	3 Nacogdoches High School. Now, what year was that?	3	<b>the names of the companies. I don't know if you know</b>
10:29	4 <b>A. 1994.</b>	4	<b>welding, but you almost are a contractor.</b>
10:29	5 Q. And San Marcos Baptist Academy?	5	Q. So what years would that have been?
10:29	6 <b>A. Well, I went there my sophomore and junior</b>	6	<b>A. '99 to 2000. Not long.</b>
10:29	7 <b>year.</b>	7	Q. Okay. And then in 2000, what was your next
10:29	8 Q. So collectively you went -- you graduated in	8	employment?
10:29	9 1994?	9	<b>A. Bartender.</b>
10:29	10 <b>A. Yeah.</b>	10	Q. And how long were you a bartender?
10:30	11 Q. And then you went immediately to SFA?	11	<b>A. About a year. So 2000-2001. Let's see.</b>
10:30	12 <b>A. Six months later or something, yeah.</b>	12	<b>20- -- maybe 2002. So maybe two years. Then right at</b>
10:30	13 Q. So roughly --	13	<b>about that time, I moved to Harlingen, Texas when I went</b>
10:30	14 <b>A. Roughly --</b>	14	<b>to the school UT McAllen, and I was a director of</b>
10:30	15 Q. -- 1995?	15	<b>development for a children's home.</b>
10:30	16 <b>A. Yeah. Let's say that, yeah.</b>	16	Q. And do you recall the name of that children's
10:30	17 Q. Okay. And the University of Texas in McAllen?	17	home?
10:30	18 <b>A. That was -- let me think. That might have</b>	18	<b>A. Sunny Glen Children's Home.</b>
10:30	19 <b>been, like, 2000, 2001.</b>	19	Q. And how long did you hold that job?
10:30	20 Q. Okay.	20	<b>A. Three or four years. I think four years.</b>
10:30	21 <b>A. I think the University of Tyler was before</b>	21	<b>What year are we up to now?</b>
10:30	22 <b>that, maybe 1999 and 2000.</b>	22	Q. Well, you said that you were at the University
10:30	23 Q. And then University of Phoenix?	23	of Texas in McAllen from 2000 to 2001.
10:30	24 <b>A. Just -- that's been ongoing. I mean, I went</b>	24	<b>A. Uh-huh.</b>
10:30	25 <b>there as recently as 2011 or '12.</b>	25	Q. So did you continue on at the Sunny Glen

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	38	40
10:30	1 Children's Home after leaving the university?	1 <b>A. What I learned about permanent medical</b>
10:30	2 <b>A. I did. I did.</b>	2 <b>recruiting.</b>
10:30	3 Q. Okay. So roughly 2001 or 2002 to --	3 Q. So you've already admitted that MHA did train
10:30	4 <b>A. It was 2006, 2007, maybe a little longer than</b>	4 you when you came to work for them?
10:30	5 <b>I told you.</b>	5 <b>A. Of course.</b>
10:30	6 Q. Okay. And then following the Sunny Glen	6 Q. Can you tell me a little bit about the
10:30	7 Children's Home, where did you go next?	7 training you did receive.
10:30	8 <b>A. We had our first child, so we moved back to</b>	8 <b>A. My training was rather brief because there's</b>
10:30	9 <b>Dallas. And then I very briefly worked for an insurance</b>	9 <b>an RIT training program, recruiter in training, I</b>
10:30	10 <b>company, I mean, a month. Then I worked for a</b>	10 <b>believe. And you -- at that time when I started there,</b>
10:30	11 <b>janitorial company selling -- janitorial sales for about</b>	11 <b>you -- you went -- we went through the training program</b>
10:30	12 <b>a year. So now we're up to 2008. And that's when I</b>	12 <b>as long as it took for you to place a doctor.</b>
10:30	13 <b>went to work for Merritt Hawkins the first time. I</b>	13 THE REPORTER: I'm sorry. You're going
10:30	14 <b>worked there for a year to -- let's see -- April 2009.</b>	14 to have to slow down for me just a little bit.
10:30	15 <b>April 2009, I went to Arthur Marshall, worked there</b>	15 THE WITNESS: Oh, sure.
10:30	16 <b>until the end of April 2010. I started back at</b>	16 THE REPORTER: You went through the
10:30	17 <b>Merritt Hawkins on May 17th, 2010, quit on this date --</b>	17 training program what?
10:30	18 <b>I don't know. I don't recall. It's in there --</b>	18 THE WITNESS: You went through the
10:30	19 <b>September something, 2012 --</b>	19 training program as long as it took for you to place
10:30	20 Q. And then from there --	20 your first doctor.
10:30	21 <b>A. -- 24th, 2012.</b>	21 <b>A. When you placed your first doctor, you were</b>
10:30	22 <b>And then from there, I went to Consilium</b>	22 <b>out of the program. That was typically a three- to</b>
10:30	23 <b>October 15th, 2012.</b>	23 <b>four-month program. I completed it in a month and a</b>
10:30	24 Q. Okay. So let's talk about the companies that	24 <b>half. So my training was rather brief in comparison to</b>
10:30	25 you worked at prior to going to work for MHA.	25 <b>others.</b>
	39	41
10:30	1 Before going to work for MHA, you had no prior	1 Q. (BY MS. NOWAK) Okay. And can you tell me the
10:30	2 experience in the medical staffing industry?	2 types of training that MHA did provide you with?
10:30	3 <b>A. Okay. Yes.</b>	3 <b>A. Mostly phone script training, tape recorder</b>
10:30	4 Q. Is that correct?	4 <b>training.</b>
10:30	5 <b>A. Somewhat. When I worked for Knight</b>	5 Q. Any other?
10:30	6 <b>Janitorial, I had -- I actually had quite a bit of</b>	6 <b>A. Of course when we first started training,</b>
10:30	7 <b>dealings with medical staffing.</b>	7 <b>medical terms, training on medical terms, the</b>
10:30	8 Q. Okay. Can you explain to me what your	8 <b>differences between a nonprofit and a profit hospital.</b>
10:30	9 dealings with medical staffing --	9 <b>I mean, all this stuff is -- it's been a while.</b>
10:30	10 <b>A. Sure. It was for a different level. I</b>	10 Q. Are you familiar with the term onboarding?
10:30	11 <b>would -- I would go into hospitals or clinics and talk</b>	11 <b>A. Sure.</b>
10:30	12 <b>to them about, hey, we need to clean -- janitorial</b>	12 Q. What does that mean?
10:30	13 <b>sales, you know. But I got a lot of knowledge about the</b>	13 <b>A. Onboarding is basically our RIT program.</b>
10:30	14 <b>medical industry through that, walking through ORs.</b>	14 <b>Merritt Hawkins' RIT program was onboarding.</b>
10:30	15 Q. But it's not your testimony here today that	15 Q. And who ran that program?
10:30	16 while you were working for the janitorial company, that	16 <b>A. Make Fay.</b>
10:30	17 you were placing doctors or actually doing any type of	17 Q. And did --
10:30	18 medical recruiting?	18 THE REPORTER: I'm sorry?
10:30	19 <b>A. No, absolutely not.</b>	19 THE WITNESS: Mike Fay, F-a-y.
10:30	20 Q. So your first experience with that type of	20 Q. (BY MS. NOWAK) During the period that you
10:30	21 work would have been when you went to work for MHA?	21 were in training, did you work closely with Mr. Fay
10:30	22 <b>A. Yes.</b>	22 then?
10:30	23 Q. So it's fair to say that what you learned	23 <b>A. I did.</b>
10:30	24 about medical recruiting came from your employment at	24 Q. So just to make sure I understand, after you
10:30	25 MHA or began at your employment with MHA?	25 trained and onboarded with MHA, you worked for them for

12 (Pages 42 to 45)



13 (Pages 46 to 49)

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<p>10:43 1 Q. What's the difference between a search  10:43 2 consultant and a senior search consultant?  10:43 3 <b>A. Nothing. More money.</b>  10:43 4 Q. Who promoted you?  10:43 5 <b>A. Actually it was Tom -- or Tim Beidle. You can</b>  10:43 6 <b>say Tim Beidle.</b>  10:43 7 Q. What was your opinion of Tim Beidle?  10:43 8 <b>A. Tim's okay.</b>  10:43 9 Q. What does that mean?  10:43 10 <b>A. He's okay.</b>  10:43 11 Q. Nobody you'd want to slap around?  10:43 12 <b>A. Somebody Billy would want to slap around</b>  10:43 13 <b>maybe.</b>  10:43 14 Q. Were you part of a specific team when you were  10:43 15 at MHA?  10:43 16 <b>A. I was. Heartland.</b>  10:43 17 Q. And what does that mean?  10:43 18 <b>A. It means I worked in the middle of the United</b>  10:44 19 <b>States; Illinois, Kansas, Arkansas, Missouri, Colorado.</b>  10:44 20 <b>I don't think -- I think that's it.</b>  10:44 21 Q. Did you work with a specific specialty or did  10:44 22 you place in all specialties?  10:44 23 <b>A. Theoretically, we weren't supposed to work</b>  10:44 24 <b>with -- yeah, specific specialty, primary care mostly.</b>  10:44 25 <b>We worked with the specialties that were not</b></p>	<p>50</p> <p>1 MR. VOLNEY: Objection; form.  2 Q. (BY MS. NOWAK) I'm just trying to ascertain,  3 did you come to know other folks who worked at MHA and  4 Staff Care while you were working for MHA?  5 <b>A. Sure.</b>  6 Q. Did you -- were you generally able to observe,  7 you know, their strengths and weaknesses, who were the  8 good players, who were -- who were the not so good  9 players?  10 <b>A. Sure. But I -- I didn't really pay a lot of</b>  11 <b>attention to it. I mean, this is a job -- this is a job</b>  12 <b>where it's really you and the -- and your clients. It</b>  13 <b>doesn't -- what other people do doesn't really matter.</b>  14 Q. But you were still aware of who the high  15 performers were and who the low performers were?  16 <b>A. Sure.</b>  17 Q. Let's talk about this e-mail that you sent to  18 Tim Beidle when you resigned.  19 Did you send an e-mail to resign the first  20 time around?  21 <b>A. I believe so. I don't -- yeah. I don't</b>  22 <b>recall. I think I did.</b>  23 Q. Mr. Gresham, I'm going to hand you what's been  24 previously marked as Exhibit 12.  25 <b>A. Uh-huh.</b></p>
<p>10:44 1 <b>hospital-based. So I could work with cardiology,</b>  10:44 2 <b>whatever.</b>  10:44 3 Q. So you placed primarily in the Heartland or  10:44 4 worked with clients that were located in the Heartland,  10:44 5 but you were placing in no specific specialty, just  10:44 6 whatever the needs of the clients in the Heartland were?  10:44 7 <b>A. I could not place hospital-based physicians.</b>  10:44 8 Q. And why is that?  10:44 9 <b>A. Because there were other teams for that.</b>  10:44 10 Q. Who else was on your team?  10:44 11 <b>A. Oh, don't get me to -- I -- Brian Couturier,</b>  10:44 12 <b>Tim Beidle. I don't remember. I mean, honestly...</b>  10:44 13 Q. Do you recall working with any specific  10:44 14 clients while you were at MHA?  10:44 15 <b>A. Sure.</b>  10:44 16 Q. So --  10:44 17 <b>A. The one -- the one I remember the most</b>  10:44 18 <b>specifically is Rifle, Colorado. They were my favorite.</b>  10:44 19 Q. During the course of your employment at MHA,  10:44 20 did you work with other employees besides those that  10:44 21 were on your team?  10:44 22 <b>A. Sure.</b>  10:44 23 Q. So you got to know other employees who were at  10:44 24 MHA and perhaps also the remaining AMN Healthcare family  10:44 25 of companies?</p>	<p>51</p> <p>1 Q. And this is a copy of the e-mail that you sent  2 to Tim Beidle.  3 And again, you went from MHA directly to  4 Consilium?  5 <b>A. No. There was --</b>  6 Q. You had employment in between?  7 <b>A. Oh, no, no, no.</b>  8 Q. Did you advise Consilium at any point in time  9 that you had an employment agreement with MHA?  10 <b>A. It was common knowledge.</b>  11 Q. It was common knowledge that you had an  12 employment agreement --  13 <b>A. Uh-huh.</b>  14 Q. -- before you went to work there?  15 <b>A. Uh-huh.</b>  16 THE REPORTER: Is that yes?  17 THE WITNESS: Yes. I'm sorry. Yes.  18 MR. VOLNEY: It makes it -- it makes it a  19 little easier -- she's looking at your mouth -- if you  20 keep your hand down.  21 THE WITNESS: Right.  22 MR. VOLNEY: It's easier.  23 THE WITNESS: Okay.  24 THE REPORTER: Thank you.  25 Q. (BY MS. NOWAK) Did you ever advise MHA at any</p>

15 (Pages 54 to 57)

10:52 1 Saturday, September 22nd?

10:52 2 **A. Right. Or thinking of leaving.**

10:52 3 Q. So you advised Mr. Dodson prior to Saturday,

10:52 4 September 22nd that you intended to leave your

10:52 5 employment with MHA?

10:52 6 **A. That I was thinking of it.**

10:52 7 Q. Do you recall what date that was?

10:52 8 **A. I do not.**

10:52 9 Q. Would it have been prior to September 17th

10:52 10 when you were speaking with Mr. Bowden about employment

10:52 11 opportunities at Consilium?

10:52 12 **A. It could have been.**

10:52 13 Q. So it's possible that as early as Monday,

10:52 14 September 17th, that you intended to quit your job at

10:53 15 MHA?

10:53 16 **A. Well, the thought was in my head for a year.**

10:53 17 **So it's possible.**

10:53 18 Q. Did you also talk with Breanna Elliott?

10:53 19 **A. I may have. I don't recall.**

10:53 20 Q. When did you first speak with Ms. Elliott

10:53 21 about your potential employment with Consilium?

10:53 22 **A. I don't recall.**

10:53 23 Q. Would it have been before you resigned?

10:53 24 **A. It would have been before I resigned.**

10:53 25 Q. And it would have been before Sunday,

1 **A. I don't know. I don't remember.**  
2 Q. Other than Mr. Dodson and Ms. Elliott, is  
3 there anyone else that you spoke to about the fact that  
4 you were contemplating going to work for Consilium?  
5 **A. I don't recall.**  
6 MS. NOWAK: Are you looking at your  
7 watch, John?  
8 MR. VOLNEY: Oh, no. I'm just -- you're  
9 doing great. It just looked like you were getting ready  
10 to move to a different subject and I was --  
11 MS. NOWAK: I am.  
12 MR. VOLNEY: -- going to suggest five  
13 minutes.  
14 MS. NOWAK: So if we'd like to take a  
15 break, we can for five, ten minutes.  
16 MR. VOLNEY: Thank you.  
17 MS. NOWAK: Thank you.  
18 THE VIDEOGRAPHER: We're off the record  
19 at 10:55 a.m.  
20 (Break taken from 10:55 to 11:04 a.m.)  
21 THE VIDEOGRAPHER: We're on the record at  
22 11:04 a.m. This is Tape 2.  
23 Q. (BY MS. NOWAK) I'm going to hand you what's  
24 going to be marked as Exhibit 19 once we have some  
25 stickers.

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	62		64	
11:04	1	(Discussion off the written record.)	1	<b>A. Oh, no. I was going to honor it. Yeah.</b>
11:04	2	(Exhibit No. 19 marked.)	2	Q. So you're going --
11:04	3	Q. (BY MS. NOWAK) Now, Mr. Gresham, you	3	<b>A. You're asking me if I think this is</b>
11:04	4	understand that a large portion of this lawsuit centers	4	<b>reasonable. It's not reasonable. But I was going to</b>
11:04	5	around your employment agreement with MHA?	5	<b>honor it.</b>
11:05	6	<b>A. Yes.</b>	6	Q. You were going to intend to honor --
11:05	7	Q. And you do recall that in connection with your	7	<b>A. Sure.</b>
11:05	8	employment, that you signed this employment agreement?	8	Q. -- the restrictions?
11:05	9	<b>A. Yes.</b>	9	And you understood that MHA would seek to
11:05	10	Q. And is Exhibit 19 a true and correct copy of	10	enforce the provisions that were contained in this
11:05	11	the employment agreement that you signed with MHA on	11	agreement should you violate them?
11:05	12	May 17th of 2010?	12	<b>A. Yes.</b>
11:05	13	<b>A. Yes.</b>	13	Q. I want to walk through just a few of the
11:05	14	Q. And you signed this employment agreement of	14	provisions that are contained in this agreement.
11:05	15	your own free will?	15	If you look on the very first page, the
11:05	16	<b>A. Yes.</b>	16	paragraph that's next to the bottom, it begins "Whereas,
11:05	17	Q. No one coerced you into signing it?	17	employee agrees."
11:05	18	<b>A. No.</b>	18	Do you see where I am?
11:05	19	Q. You weren't under any type of duress?	19	<b>A. Uh-huh, I do.</b>
11:05	20	<b>A. No.</b>	20	Q. I'm going to read that paragraph very quickly.
11:05	21	Q. And if we turn to the final page of this	21	Whereas, employee agrees and acknowledges that
11:05	22	document, is that your signature?	22	company would not have agreed to employ or continue to
11:05	23	<b>A. Yes.</b>	23	employ employee or disclose and provide access to the
11:05	24	Q. And you have signed contracts before?	24	company's confidential business, absent the covenants
11:05	25	<b>A. Yes.</b>	25	and restrictions set forth in this agreement, especially
	63		65	
11:05	1	Q. And when you signed this agreement, you agreed	1	employee's covenants in Sections 2 and 5.
11:05	2	to be bound by the terms that are contained --	2	Did I read that correctly?
11:05	3	<b>A. Yes.</b>	3	<b>A. You did.</b>
11:05	4	Q. -- in this employment agreement?	4	Q. Okay. And I'm going to represent to you that
11:05	5	<b>A. Yes.</b>	5	the covenant in Section 2 relates to confidentiality.
11:05	6	Q. And at the time that you signed it, you fully	6	That's the title of Section 2.
11:05	7	intended to be bound?	7	<b>A. Okay.</b>
11:05	8	<b>A. Yes.</b>	8	Q. And that the covenant in Section 5 relates to
11:05	9	Q. And you understood the effects of signing?	9	your agreements related to noncompetition.
11:05	10	<b>A. Yes.</b>	10	<b>A. Okay.</b>
11:05	11	Q. And you agreed at the time that you were	11	Q. Did you understand at the time that you signed
11:05	12	signing, that the restrictions that were contained in	12	this employment agreement that Merritt Hawkins would not
11:05	13	this employment agreement were reasonable and necessary	13	have hired you absent your agreement to honor Sections 2
11:05	14	to protect MHA?	14	and 5 of this agreement?
11:05	15	<b>A. No, I -- I don't agree that they're</b>	15	<b>A. Yes.</b>
11:05	16	<b>reasonable. But that's fine.</b>	16	Q. All right. Well, let's start with Section 2,
11:05	17	Q. At the time that you signed it, you did not	17	which relates to confidentiality. And actually, I'll
11:05	18	agree that they were reasonable?	18	even back up. We're going to look at that paragraph --
11:05	19	<b>A. No. I had already left once. No.</b>	19	that Paragraph 1 -- or Section 1 first.
11:05	20	Q. So did you think this was just some	20	It appears to me that that's a definition of
11:05	21	meaningless agreement that you were signing?	21	what MHA defines to be confidential business
11:05	22	<b>A. No, I didn't think it was meaningless. I</b>	22	information. Would you agree with that assessment?
11:05	23	<b>think...</b>	23	<b>A. I agree.</b>
11:05	24	Q. But you didn't have any intention of honoring	24	Q. Okay. So you would agree that MHA considers
11:05	25	it, then. Is that what you're telling me?	25	its marketing strategies and methods to be confidential

17 (Pages 62 to 65)

18 (Pages 66 to 69)

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11:10	1 Q. Did you have access to the database?	1 agreement that you couldn't use any of this confidential
11:10	2 <b>A. I did.</b>	2 information in your employment with any other medical
11:10	3 Q. Okay. And you could search in the database	3 staffing firm --
11:10	4 for things?	4 <b>A. Yes.</b>
11:10	5 <b>A. I don't know if you could search. I don't</b>	5 Q. -- such as Consilium?
11:10	6 <b>know.</b>	6 <b>A. Yes.</b>
11:10	7 Q. Okay. Well --	7 Q. So let's look at Paragraph 2.
11:10	8 <b>A. I mean, you can ask it any way you want to. I</b>	8 And it says here in Paragraph 2 that, Employee
11:12	9 <b>don't know.</b>	9 covenants and agrees that he/she will not use any of the
11:12	10 Q. But the names of the clients were in the	10 confidential business information, company training, or
11:12	11 database?	11 company relationships for any purpose other than in the
11:12	12 <b>A. Yes.</b>	12 course and scope of his/her employment and for the
11:12	13 Q. The exact names of the doctors were in the	13 exclusive benefit of the company.
11:12	14 database?	14 What does that mean to you?
11:12	15 <b>A. Yes.</b>	15 <b>A. That I won't use the information at another</b>
11:12	16 Q. Were there --	16 <b>company. I mean, that's --</b>
11:12	17 <b>A. Sometimes they weren't exact names, but yes.</b>	17 Q. And as we --
11:12	18 Q. And you had access to those?	18 <b>A. -- pretty simple.</b>
11:12	19 <b>A. Yes.</b>	19 Q. -- sit here today, are you alleging that that
11:12	20 Q. Did you have access to the doctors' CVs?	20 provision is unenforceable?
11:12	21 <b>A. On my own computer. Some people put them in</b>	21 <b>A. That I would not take their database -- no.</b>
11:13	22 <b>the database. It wasn't usually done.</b>	22 <b>Yeah, that's fine.</b>
11:13	23 Q. But you maintained them on your own computer?	23 Q. So as we sit here, you're not claiming that
11:13	24 <b>A. Yes.</b>	24 you have a right to use or disclose any of MHA's
11:13	25 Q. And those would have been CVs that you were	25 confidential information?
	71	73
11:13	1 using during and in the course of your employment with	1 <b>A. No.</b>
11:13	2 MHA --	2 Q. And you agree and recognize that the items
11:13	3 <b>A. Uh-huh, yes.</b>	3 that are detailed here are MHA's confidential
11:13	4 Q. -- to carry out the functions of your job?	4 information?
11:13	5 <b>A. Yes.</b>	5 MR. VOLNEY: Objection; form.
11:13	6 Q. Did you also have access to MHA's contract	6 You can answer. I'm just preserving my
11:13	7 terms?	7 objection for the record.
11:13	8 <b>A. Yes.</b>	8 THE WITNESS: Oh, okay. I didn't know
11:13	9 Q. What about revenue reports?	9 what that meant.
11:13	10 <b>A. Not that I know of.</b>	10 MR. VOLNEY: That's all right.
11:13	11 Q. Any budgets?	11 <b>A. Yeah. I mean, these items listed here are</b>
11:13	12 <b>A. Not that I know of.</b>	12 <b>confidential information. But a lot of this stuff --</b>
11:13	13 Q. So when it lists all of these items here in	13 <b>some of it's not. I mean, some of it's available all</b>
11:13	14 your employment agreement, you agree MHA held up its end	14 <b>over the place, but...</b>
11:13	15 of the bargain, it gave you access to confidential	15 Q. (BY MS. NOWAK) But you agree that the items
11:13	16 information?	16 that are listed therein, MHA considered to be its
11:13	17 <b>A. Yes.</b>	17 confidential --
11:13	18 Q. And they had you sign an agreement that laid	18 <b>A. MHA considered to be its confidential</b>
11:13	19 each one of these items out so you would be aware of	19 <b>information.</b>
11:13	20 what they were?	20 Q. You agreed that you would maintain it as
11:13	21 <b>A. Yes.</b>	21 confidential and you certainly don't disagree that a
11:13	22 Q. And you agreed in writing that each of these	22 large portion of those items at least are, in fact,
11:14	23 categories was confidential?	23 confidential information?
11:14	24 <b>A. Yes.</b>	24 <b>A. A large portion, sure.</b>
11:14	25 Q. And you understood by and through this	25 Q. Okay. So why don't you detail for me which of

11:13 1 have an answer for that.

11:13 2 I would almost think all of H was public

11:13 3 knowledge -- or -- or quite a bit of H is public

11:13 4 knowledge. I is public knowledge. That's about all I

11:13 5 see.

11:13 6 Q. (BY MR. VOLNEY) So other than the items that

11:13 7 you have excerpted out, you would agree with me that the

11:13 8 things that are listed in this Paragraph 1, Confidential

11:13 9 Business Information, are, in fact, the confidential

11:16 10 information of MHA?

11:16 11 A. Yes.

11:16 12 Q. What steps did you take after you left MHA to

11:16 13 make sure that you weren't using any of their

11:16 14 confidential information?

11:16 15 THE WITNESS: I can't do that?

11:16 16 MR. VOLNEY: You can't do that.

11:16 17 THE WITNESS: Oh, I'm sorry.

11:16 18 A. What steps. I got my wife, and we looked

11:16 19 around the house to see if I had anything. We didn't

11:16 20 have anything in paper, you know. I looked at my

11:16 21 computer briefly, didn't see anything. That's -- that's

11:16 22 it. It wasn't a big deal.

11:16 23 Q. (BY MS. NOWAK) It wasn't a big deal to you

11:16 24 whether or not you were disclosing --

11:16 25 A. No, I didn't have anything. I knew I didn't

1           **A. I may have. I don't -- it could have been my**  
2 **employment at Arthur Marshall. I don't know. I'd have**  
3 **to look at it. I don't know because I didn't work**  
4 **with --**  
5           Q. Would --  
6           **A. -- PAs at Merritt Hawkins.**  
7           Q. Would you -- in the -- in the document that  
8 we're looking at, can you refer me to the doctor's CV --  
9 or excuse me, the CV that -- that we're referring to?  
10          **A. I'm looking for it right now.**  
11                 MR. VOLNEY: It's 49.  
12                 THE WITNESS: Thank you.  
13          **A. Yes. This was a CV of one of my clients at**  
14 **Merritt Hawkins, not a doctor I was working with.**  
15          Q. (BY MS. NOWAK) Okay. So this is a CV of one  
16 of your clients?  
17          **A. Yes.**  
18          Q. So you would agree with me that you obtained  
19 this document during the course of your employment with  
20 MHA?  
21          **A. Yes.**  
22          Q. And it relates to a client of MHA?  
23          **A. Yes.**  
24          Q. Okay. And you've also admitted that you had  
25 in your possession after leaving MHA letters to doctors?



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	78	80
11:28	1 A. No. I'm sorry. This was not a -- this was	1 Q. Okay. This is a form of an offer letter that
11:28	2 not a CV of one of my clients. This was a CV of a PA I	2 MHA uses?
11:28	3 was working at -- working with while at MHA. It was the	3 A. Yes -- no. It's a form of an offer -- that
11:28	4 only PA search I ever did.	4 Breanna Elliott from MHA uses. Everybody has their own
11:28	5 Q. So does the testimony remain the same --	5 offer letter. We wrote them ourselves.
11:28	6 A. Yes.	6 Q. Okay. And you wrote -- you would have written
11:28	7 Q. -- that this is someone that you worked with	7 those letters during the course of your employment.
11:28	8 while you were at MHA?	8 Did you base your letter off of seeing other
11:28	9 A. Yes.	9 MHA employee letters?
11:28	10 Q. This is a client or a doctor of MHA?	10 A. It looks like I based -- no. I thought I
11:28	11 A. Yes.	11 based mine off those, but I didn't.
11:28	12 Q. Absent your employment with MHA, you would not	12 Q. But you would have likely based your letter
11:28	13 have this information?	13 off of looking at other employee letters?
11:28	14 A. Yes.	14 A. Yes.
11:28	15 Q. And if we can turn back to the front, you also	15 Q. You wouldn't have created it from scratch, you
11:28	16 had a -- have admitted that you had several letters to	16 would have referred to other MHA documents in order to
11:28	17 doctors.	17 come up with your offer letter that you drafted and
11:28	18 Would these be the letters to which you're	18 created while you were employed by MHA?
11:28	19 referring?	19 A. I created some from scratch. I mean -- yeah.
11:28	20 A. Yes.	20 Some from scratch, some from others.
11:28	21 Q. Okay. And what are these letters?	21 Q. Okay. So you've identified the first two
11:28	22 A. Offer letters.	22 documents as being offer letters.
11:28	23 Q. And are these letters that you obtained	23 Now, did you obtain those directly from
11:28	24 through the course of your employment at MHA?	24 Ms. Elliott?
11:28	25 A. The third is a letter I wrote and the other	25 A. Yeah. She e-mailed them to me, I'm sure.
	79	81
11:28	1 two are letters someone else wrote. Yes.	1 Q. Do you recall when she would have e-mailed
11:28	2 Q. And when would you have written this letter?	2 them to you?
11:28	3 And I believe you're referring to Gresham 22?	3 A. I don't. I -- it could have been August -- it
11:28	4 A. April 20th, 2011.	4 could have been that day, August 25th, 2010. I don't
11:28	5 Q. And that would have been during the course of	5 know.
11:28	6 your employment with MHA?	6 Q. Is it possible that she could have e-mailed
11:28	7 A. Yes.	7 them to you after you left MHA?
11:28	8 Q. And to satisfy your job functions as --	8 A. No.
11:28	9 A. Yes.	9 Q. Let's turn to that third page, the April 20,
11:28	10 Q. You also had in your possession after leaving	10 2011 letter.
11:28	11 MHA, MHA's client worksheets?	11 A. Uh-huh.
11:28	12 A. Yes.	12 Q. Can you tell me what this letter is?
11:28	13 Q. And those are forms that MHA has developed?	13 A. It's an offer letter.
11:28	14 A. Yes.	14 Q. Did you ever work with this doctor during the
11:28	15 Q. Okay. Let's walk through these a little more	15 course of --
11:28	16 specifically.	16 A. I did. I worked with that doctor and that
11:28	17 So the first page here is Gresham No. 20. Can	17 client.
11:28	18 you tell me what that document is?	18 Q. At MHA?
11:28	19 A. An offer letter.	19 A. At MHA.
11:28	20 Q. Okay. And did you ever work with Dr. Hartman	20 MR. VOLNEY: Let her finish, please.
11:28	21 while you were at MHA?	21 THE REPORTER: Yes, please, because I'm
11:28	22 A. I did not.	22 not hearing --
11:28	23 Q. Have you ever worked with Dr. Hartman while	23 THE WITNESS: I'm sorry.
11:28	24 you were at Consilium?	24 THE REPORTER: -- the end of her
11:28	25 A. No. I don't even know who Dr. Hartman is.	25 questions at all.

22 (Pages 82 to 85)

11:28 his/her possession, custody, or control, as well as any  
11:28 documents, records, notes of other work product,  
11:28 materials, information, and other property in his/her  
11:28 possession, custody, or control which is in any way  
11:28 connected with or derived from his/her services to or  
11:29 affiliation with company.  
11:29 Did I read that correctly?  
11:29 **A. You did.**  
11:29 Q. Now, you agreed to return all the documents  
11:29 that we've just been discussing.  
11:29 **A. Okay.**  
11:29 Q. And you obviously did not?  
11:29 **A. I did.**  
11:29 Q. You did return all of these documents --  
11:29 **A. You have them.**  
11:29 Q. -- prior to leaving your employment at MHA?  
11:29 **A. No.**  
11:29 Q. So MHA had to file a lawsuit against you to  
11:29 get these copies back.  
11:29 **A. Okay.**  
11:29 Q. Is that correct?  
11:29 **A. I don't think that's why the lawsuit was**  
11:29 **filed. But sure.**  
11:29 Q. But the fact of the matter remains that when  
11:29 your employment with MHA terminated, you did not return

1 employment with the company for any reason, employee  
2 agrees that he/she will not within the restricted  
3 territory perform services of the same, similar, or  
4 greater nature to those performed by employee for the  
5 company for any person, entity, or venture which  
6 competes with the business of the company, which  
7 business includes recruiting and providing temporary and  
8 permanent healthcare professional placements and other  
9 staffing services to healthcare professionals,  
10 healthcare facilities, and other healthcare  
11 organizations.

12 Did I read that correctly?

13 **A. You did.**

14 Q. So if we were going to break that down, it  
15 says here that if your employment with MHA terminates  
16 for any reason, that for a period of one year after  
17 that, you won't go to work for a company that does the  
18 same or -- excuse me, offers the same or similar  
19 services if they're located within that restricted  
20 territory; is that correct?

21 **A. Yes.**

22 Q. And I want to talk just a little bit about  
23 what constitutes same or similar. But let's go ahead  
24 and look at what's defined as the restricted territory.  
25 The restricted territory is defined as Dallas.

24 (Pages 90 to 93)

1 reasonable?

II:34 2 **A. Yes. I signed the document.**

II:34 3 Q. And at the time that you signed it, you fully

II:35 4 intended to honor it?

II:35 5 **A. Yes. But I didn't think it was reasonable.**

II:35 6 Q. So --

II:35 7 **A. We've already been over that, though.**

II:35 8 Q. But this agreement says that you believe that

II:35 9 it is reasonable.

II:38 10 So at the time that you signed it, you didn't

II:38 11 intend to honor these terms. Is that what you're

II:38 12 saying?

II:38 13 **A. No. I intended to honor it.**

II:38 14 Q. I think I'm having a disconnect with you,

II:38 15 Mr. Gresham, because --

II:38 16 **A. I think you are.**

II:38 17 Q. -- you signed an agreement that says that you

II:38 18 agree that the covenants are reasonable, correct?

II:38 19 **A. Okay.**

II:38 20 Q. But you're telling me at the time you signed

II:38 21 it, you did not, in fact, believe what you were signing?

II:38 22 **A. I believe that I would honor it. I did not**

II:38 23 **believe that it was reasonable. No one believes that**

II:38 24 **that is reasonable, but --**

II:38 25 Q. So when you say here employee agrees that this

1 So at the time that you signed this agreement,  
2 you said that 12 months was a reasonable restriction; is  
3 that correct?  
4 **A. Yes.**  
5 Q. And at the time you signed this, you said that  
6 the restricted territory as defined was also reasonable?  
7 **A. Yes.**  
8 Q. And you would agree with me that 12 months  
9 from the date of your resignation at MHA until the time  
10 of its expiration would have been September 24th, 2013?  
11 **A. Yes.**  
12 Q. And September of 2013, how long had you been  
13 working at Consilium?  
14 **A. In September of -- a year -- no. Ten months,**  
15 **ten and a half months. But I wasn't even working there**  
16 **September 24th, 2013.**  
17 THE REPORTER: You need to repeat that.  
18 I couldn't hear you.  
19 THE WITNESS: But I wasn't working there  
20 September 24th, 2013, I don't believe.  
21 Q. (BY MS. NOWAK) When do you recall resigning  
22 from Consilium?  
23 **A. I think -- I believe it was September 20th or**  
24 **21st. I don't recall.**  
25 Q. Let's turn now to that next page, Page 5, and

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11:38	1 look at Subsection B entitled Nonsolicitation of	1 <b>would take. Oh, I talked to that doctor before, I won't</b>
11:38	2 Clients.	2 <b>talk to him. Yeah, I would do that if that happened.</b>
11:38	3 <b>A. (Witness complies.)</b>	3 Q. And did that --
11:38	4 Q. And it says in this provision that, During	4 <b>A. It never -- it never happened.</b>
11:38	5 employee's employment with the company and for a period	5 Q. And how can you be sure that it never
11:39	6 of 12 months following the termination of employee's	6 happened? Did you review documents to make sure that it
11:39	7 employment with the company for any reason, employee	7 didn't happen? Did you have a list of folks that you
11:39	8 agrees not to either individually or jointly, directly	8 knew you couldn't contact?
11:39	9 or indirectly, either as an employee, employer,	9 <b>A. I knew who I talked to before.</b>
11:39	10 operator, agent, independent contractor, owner,	10 Q. Let's go ahead and look just briefly at the
11:39	11 consultant, partner, investor, or otherwise, call upon,	11 Subsection C which is talking about soliciting and
11:39	12 solicit, or provide any products or services that	12 recruiting other employees. And I won't go through the
11:39	13 compete with the products and services offered by the	13 effort of reading this whole provision.
11:39	14 company to any actual or prospective client, customer,	14 But did you understand that this provision
11:39	15 or candidate for placement/healthcare professionals of	15 meant that for a period of 36 months after the
11:39	16 the company and who was serviced directly or indirectly	16 termination of employment at MHA, that you wouldn't
11:39	17 by employee or with whom employee otherwise dealt	17 solicit or recruit other MHA employees --
11:39	18 directly or indirectly, including the management or	18 <b>A. Yes.</b>
11:39	19 supervision of others who serviced or dealt with such	19 Q. -- away from MHA?
11:39	20 client, customer, or candidate, during the 12-month	20 <b>A. Yes.</b>
11:39	21 period prior to his or her separation from the company.	21 Q. And this -- since you left MHA in September of
11:39	22 Did I read that correctly?	22 2012, you understand that this provision remains in
11:39	23 <b>A. Yes.</b>	23 effect as we sit here today?
11:39	24 Q. And this provision basically says that for 12	24 <b>A. I'm sure it does.</b>
11:39	25 months following your termination -- or the termination	25 <b>Do you mean the provision on myself?</b>
	99	101
11:42	1 of your employment at MHA, you won't communicate or work	1 Q. Yes.
11:42	2 with any of the clients, customers, or the candidates of	2 <b>A. Oh, yes, I do.</b>
11:42	3 MHA that you actually serviced directly or indirectly	3 Q. And as we sit here today, do you intend to
11:42	4 during the final year of your employment at MHA?	4 honor that provision?
11:42	5 <b>A. Correct.</b>	5 <b>A. Sure.</b>
11:42	6 Q. Is that what you understand this provision to	6 Q. Some of the language in this agreement, if
11:42	7 mean?	7 you'll see, it references in these provisions that you
11:42	8 <b>A. It is.</b>	8 can't do actions either directly or indirectly.
11:42	9 Q. So at the time that you signed this employment	9 In general, you would agree with me you can't
11:42	10 agreement, you understood that if you left MHA, for a	10 instruct someone else to do something that you're
11:42	11 year after that, you were precluded from working with,	11 prohibited from doing under this agreement, can you?
11:42	12 contacting in any way, any of the clients, candidates,	12 <b>A. Sure.</b>
11:42	13 customers that you worked with at MHA for the last 12	13 Q. So if this agreement says you can't solicit a
11:42	14 months of your employment?	14 candidate, you can't go whisper in someone else's ear
11:42	15 <b>A. Yes.</b>	15 and say, hey, I can't call them, so you call them?
11:42	16 Q. And what steps did you take after leaving MHA	16 <b>A. Right, of course.</b>
11:42	17 to make sure that you weren't soliciting any of those	17 Q. Let's move on from the employment agreement
11:42	18 people?	18 just for a little bit and talk about your employment at
11:42	19 <b>A. The company I went to work -- I didn't solicit</b>	19 Consilium.
11:42	20 <b>clients for the company I worked -- the next company I</b>	20 So you were employed with Consilium for
11:42	21 <b>worked for, so it didn't matter.</b>	21 approximately a year?
11:42	22 Q. You didn't work with any clients, customers,	22 <b>A. Right. About ten and a half months.</b>
11:42	23 or candidates?	23 Q. And you've already testified that you were a
11:42	24 <b>A. I worked with candidates, but I didn't work</b>	24 recruiter for them?
11:42	25 <b>with clients or customers. I don't know what steps you</b>	25 <b>A. I was.</b>

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111:42	1 Q. And you were placing medical specialists with	1	Mr. Moberly while you were at MHA?
111:43	2 providers?	2	<b>A. I did not.</b>
111:43	3 <b>A. On a temporary basis. I wouldn't even call</b>	3	Q. Who else was on your team while you were at
111:43	4 <b>it -- actually, I wouldn't call it placing. I would</b>	4	Consilium?
111:43	5 <b>call it staffing.</b>	5	<b>A. Kevin Bruce, Brent -- I can't remember Brent's</b>
111:43	6 Q. Okay. What was the official start date of	6	<b>last name anymore.</b>
111:43	7 your employment?	7	Q. Would it have been Burrows?
111:43	8 <b>A. October 15th, 2012.</b>	8	<b>A. Yes, Brent Burrows.</b>
111:43	9 Q. And is that the date that you accepted your	9	<b>I don't remember some of the other recruiters</b>
111:43	10 offer of employment or the date that you actually first	10	<b>because it was in and out. I mean, that's the type of</b>
111:43	11 showed up for work?	11	<b>business it is.</b>
111:43	12 <b>A. First showed up for work.</b>	12	Q. What do you mean in and out? People came and
111:43	13 Q. Did you have any other titles other than	13	went --
111:43	14 recruiter during the time that you were employed by	14	<b>A. Sure.</b>
111:43	15 Consilium?	15	Q. -- pretty quickly --
111:43	16 <b>A. Recruiter wasn't actually my title.</b>	16	<b>A. Sure.</b>
111:43	17 Q. Okay.	17	Q. -- on a regular basis?
111:43	18 <b>A. I don't remember what the title was --</b>	18	<b>A. Sure.</b>
111:43	19 Q. Whatever --	19	Q. Do you recall where Mr. Bruce was employed
111:43	20 <b>A. -- senior something.</b>	20	prior to coming to Consilium?
111:43	21 Q. Whatever the title was, did it change during	21	<b>A. I know at some point he was employed by MHA,</b>
111:43	22 the time you were there or remain the same?	22	<b>but I don't know when that was.</b>
111:43	23 <b>A. No.</b>	23	Q. And what about Mr. Burrows?
111:43	24 Q. And the end result of it is that you were	24	<b>A. I know that Mr. Burrows had been employed by</b>
111:43	25 acting as a recruiter?	25	<b>Staff Care.</b>
	103		105
111:45	1 <b>A. Yes.</b>	1	Q. And Staff Care, is it your understanding, is
111:45	2 Q. Whatever the title is?	2	part of the AMN family of companies?
111:45	3 <b>A. Yes.</b>	3	<b>A. Yes.</b>
111:45	4 Q. What territories did you work in?	4	Q. So a sister company to MHA?
111:45	5 <b>A. The East Coast and Texas.</b>	5	<b>A. Somewhat.</b>
111:45	6 Q. And who's included in the East Coast and	6	MR. VOLNEY: Evil sister.
111:45	7 Texas?	7	<b>A. Yeah, yeah. They don't get along very well.</b>
111:45	8 <b>A. We mostly -- Florida, a little Georgia,</b>	8	Q. (BY MS. NOWAK) How is it that you came to
111:45	9 <b>New York. I mean, we -- it could be the entire eastern</b>	9	learn about Consilium?
111:45	10 <b>coast --</b>	10	<b>A. I texted Billy and said, are you still at</b>
111:45	11 Q. Okay.	11	<b>Delta, and I found out he was at Consilium. And I had</b>
111:45	12 <b>A. -- and Texas.</b>	12	<b>known about Consilium before because Joe Hawkins started</b>
111:45	13 Q. Did you ever while you were working at	13	<b>it.</b>
111:45	14 Consilium do any staffing that involved the Heartland?	14	Q. And how are you familiar with Mr. Hawkins?
111:45	15 <b>A. No.</b>	15	<b>A. He signed my checks when I started at MHA. He</b>
111:45	16 Q. You never made any placements or any staffing	16	<b>had actually just left. But I mean, everybody at MHA</b>
111:45	17 whatsoever to anyone that was located in the Heartland?	17	<b>knew Joe, who he was.</b>
111:45	18 <b>A. When I was at Consilium, we had no accounts in</b>	18	Q. Was he considered to be a fairly influential
111:45	19 <b>the Heartland, anyway.</b>	19	guy in this industry?
111:45	20 Q. Okay. What specialties did you work in while	20	<b>A. Sure.</b>
111:45	21 you were at Consilium?	21	Q. So how is it that you came to be hired, then,
111:45	22 <b>A. Hospital-based specialties.</b>	22	at -- at Consilium? Walk me through -- what was the
111:45	23 Q. And you were on Mr. Moberly's team?	23	chain of events?
111:45	24 <b>A. Yes.</b>	24	<b>A. Okay. I texted Billy to see if he was at</b>
111:45	25 Q. Had you ever worked with or did you know	25	<b>Delta. That evening, which was the 7- -- let me help</b>

28 (Pages 106 to 109)



11:54 1 Thank you for taking time to talk to me  
11:54 2 today --  
11:54 3 THE REPORTER: Okay. You're going to  
11:54 4 have to slow down for me.  
11:54 5 MR. VOLNEY: Yeah.  
11:54 6 THE REPORTER: I can't take you that  
11:54 7 fast.  
11:54 8 A. Thank you for taking the time today to talk  
11:54 9 with me about Consilium Staffing as a whole, as well as  
11:54 10 the recruiter opening. I remain extremely excited about  
11:54 11 the position. I look forward to our future meetings.  
11:54 12 MR. VOLNEY: Slow down.  
11:54 13 A. Additionally, thank you for adjusting your  
11:54 14 schedule to accommodate such an early meeting on Friday  
11:54 15 morning. Have a great evening and I will see you on  
11:54 16 Friday at 7:00 a.m.  
11:54 17 Q. (BY MS. NOWAK) So does this e-mail refresh  
11:54 18 your recollection of what you and Ms. Stephens discussed  
11:54 19 on September the 19th, that you discussed an employment  
11:54 20 opportunity --  
11:54 21 A. It --  
11:54 22 Q. -- specifically a recruiter opening?  
11:54 23 A. It really still does not. I mean, I told you  
11:54 24 I had -- I don't have the recollection.  
11:54 25 Q. Do you have any reason to doubt that this

1 Q. Okay. And what would y'all have talked about?  
2 A. I have no idea. I mean, this is two years  
3 ago. He called me a butt pirate. I mean, that's the  
4 thing. We're friends. It -- it could have been -- who  
5 knows what we talked about.  
6 Q. Can you turn with me to Gresham 62, please.  
7 A. Sure.  
8 Q. It says here about midway down the page under  
9 September 20th, it said, This is killing me, LOL, I just  
10 want to walk out.  
11 A. I told you I wanted to quit.  
12 Q. Okay. So as of September 20th, you intended  
13 to quit --  
14 A. For a --  
15 Q. -- MHA?  
16 A. For a year I wanted to quit.  
17 Q. But you had made the decision as of  
18 September 20th that you were going to quit, it was just  
19 a matter of the timing?  
20 A. No. It doesn't say that. I said -- it says,  
21 I just want to walk out.  
22 Q. I know. I'm just asking you.  
23 A. I don't know. I -- I mean, I don't know.  
24 Q. Did you have a September 21st meeting with  
25 Ms. Stephens?

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<p>11:53 1 <b>A. Yes, I did.</b></p> <p>11:53 2 Q. And what happened during that September 21st</p> <p>11:53 3 meeting?</p> <p>11:53 4 <b>A. I took a personality test.</b></p> <p>11:53 5 Q. What did they have you do during a personality</p> <p>11:53 6 test?</p> <p>11:53 7 <b>A. Answer questions.</b></p> <p>11:53 8 Q. Like what?</p> <p>11:53 9 <b>A. Some of that -- there were math questions.</b></p> <p>11:53 10 <b>And then -- I mean, it's a -- it's the type A, B, C.</b></p> <p>11:53 11 <b>It's a personality test. It's just questions.</b></p> <p>11:53 12 Q. Did you actually --</p> <p>11:53 13 <b>A. They're random.</b></p> <p>11:53 14 Q. -- meet with Ms. Stephens or did you just take</p> <p>11:53 15 this personality assessment?</p> <p>11:53 16 <b>A. I met with her, she gave me the test, I</b></p> <p>11:53 17 <b>finished the test, I gave it back to her. I probably</b></p> <p>11:53 18 <b>did say words with her.</b></p> <p>11:53 19 Q. Where did the meeting take place?</p> <p>11:53 20 <b>A. In her office.</b></p> <p>11:53 21 Q. And did you meet with anybody else besides</p> <p>11:53 22 Ms. Stephens on September 20th?</p> <p>11:53 23 <b>A. I did not.</b></p> <p>11:53 24 Q. And if we look at your text messages with</p> <p>11:53 25 Mr. Bowden, when you say finished in 23 minutes, are you</p>	<p>116</p> <p>1 be getting an offer?</p> <p>2 <b>A. I don't recall. I don't think so.</b></p> <p>3 Q. Is it possible that she did?</p> <p>4 <b>A. It's not possible -- no, it's not possible</b></p> <p>5 <b>because I hadn't met with the partners. She -- she did</b></p> <p>6 <b>not have the ability to extend an offer.</b></p> <p>7 Q. Okay. So if we're looking at our timing,</p> <p>8 Friday was September the 21st and then Saturday would</p> <p>9 have been September 22nd, Sunday would have been</p> <p>10 September 23rd, and then Monday is September 24th when</p> <p>11 you resigned.</p> <p>12 <b>A. Okay.</b></p> <p>13 Q. Friday was the last date that you ever went</p> <p>14 into work at MHA; is that correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Did you actually go into the offices on</p> <p>17 Friday --</p> <p>18 <b>A. I did.</b></p> <p>19 Q. -- September 21st?</p> <p>20 <b>A. I did.</b></p> <p>21 Q. Okay. And did you work a full day?</p> <p>22 <b>A. I'm sure I did.</b></p> <p>23 Q. And did you give any indication to anyone that</p> <p>24 you wouldn't be back on Monday?</p> <p>25 <b>A. No.</b></p>
<p>115</p> <p>11:58 1 talking about the length of time that it took for you to</p> <p>11:58 2 get through the personality test?</p> <p>11:58 3 <b>A. Yes. Because I was on a crunch. I had to get</b></p> <p>11:58 4 <b>to work.</b></p> <p>11:58 5 Q. And you didn't want to get caught?</p> <p>11:58 6 <b>A. Sure.</b></p> <p>11:58 7 Q. Did you ever see Mr. Bowden at Consilium's</p> <p>11:58 8 offices during any of the times that you were there for</p> <p>11:58 9 meetings or interviews?</p> <p>11:58 10 <b>A. I don't know if I saw him on that Wednesday.</b></p> <p>11:58 11 <b>I know on this Friday I didn't see him, because when</b></p> <p>11:58 12 <b>he -- I remember when he said, hey, I'm downstairs</b></p> <p>11:58 13 <b>having Bible study, I didn't go by --</b></p> <p>11:58 14 Q. Okay.</p> <p>11:58 15 <b>A. -- because I had to get out of there.</b></p> <p>11:58 16 Q. But it's possible that some of the other times</p> <p>11:58 17 that you were there in the office you might have seen</p> <p>11:58 18 him --</p> <p>11:58 19 <b>A. I might have.</b></p> <p>11:58 20 Q. At the end of your personality assessment on</p> <p>11:58 21 September the 21st, did Consilium extend an offer of</p> <p>11:58 22 employment to you?</p> <p>11:58 23 <b>A. On September 21st?</b></p> <p>11:58 24 Q. Yes.</p> <p>11:58 25 Did Christina tell you, it looks good, you'll</p>	<p>117</p> <p>1 Q. Okay. Did you know that you wouldn't be back</p> <p>2 on Monday?</p> <p>3 <b>A. I don't think I knew yet what I was going to</b></p> <p>4 <b>do.</b></p> <p>5 Q. So you made that decision sometime on</p> <p>6 Saturday?</p> <p>7 <b>A. Saturday or Sunday.</b></p> <p>8 Q. Okay. And on Sunday, you went into MHA's</p> <p>9 offices?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And do you recall what time you went into</p> <p>12 MHA's offices?</p> <p>13 <b>A. I don't recall. In the afternoon. But the --</b></p> <p>14 <b>the card would tell you what time I came in.</b></p> <p>15 Q. If I represented to you that you came in at</p> <p>16 4:00 in the afternoon, would that sound correct to you?</p> <p>17 <b>A. That's fine.</b></p> <p>18 Q. Can you look with me again at these text</p> <p>19 messages. And let's look at Gresham Page 66.</p> <p>20 <b>A. Okay.</b></p> <p>21 Q. And about midway down the page, September the</p> <p>22 21st -- 24th, excuse me -- 2012 at 9:12 a.m. Mr. Bowden</p> <p>23 sends you a message saying, You doing the dirty deed</p> <p>24 yet?</p> <p>25 <b>A. Quitting.</b></p>

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	118		120
112:08	1 Q. Is that what --	1	someone who worked at Consilium after September the
112:08	2 A. Yes.	2	25th?
112:08	3 Q. -- he's referring to?	3	A. I met with Joe and Matt I think that week. I
112:09	4 Had you already spoken to Mr. -- Mr. Bowden	4	just don't remember if it was the 26th or the 27th.
112:09	5 about the fact that you were quitting?	5	Q. Okay. But it would have been either
112:09	6 A. I may have talked to him Saturday or Sunday.	6	Wednesday, September 26th or Thursday, September 27th?
112:09	7 Q. It stands to reason that you did talk to him,	7	A. I believe so.
112:09	8 otherwise he wouldn't --	8	Q. And where did that meeting with Joe Hawkins
112:09	9 A. Why would he know.	9	take place?
112:09	10 Q. -- have had any information to send this text	10	A. In his office.
112:09	11 message?	11	Q. And was anyone else present?
112:09	12 A. Why would he know.	12	A. Matt Baade.
112:09	13 Q. Correct.	13	Q. And were you familiar with Mr. Baade from your
112:09	14 After Friday, September the 22nd, when is the	14	employment at MHA?
112:09	15 next time that you met with Mr. Bowden or Ms. Stephens	15	A. I was not.
112:09	16 or anyone else from Consilium?	16	Q. And what was the substance of your discussions
112:09	17 A. Let's see. I met with Billy for lunch at	17	with Mr. Hawkins and Mr. Baade on either September 26th
112:09	18 Ali Baba on September 25th, it looks like.	18	or September 27th?
112:09	19 Q. So that would have been the day after you	19	A. The main crux of that discussion was the
112:09	20 formally resigned?	20	differences in temporary and permanent staffing and how
112:09	21 A. Yes.	21	permanent -- permanent physician recruiters don't
112:09	22 Q. Did you talk with Mr. Bowden, though, on the	22	usually do well in temporary staffing --
112:09	23 date that you did resign?	23	Q. Did --
112:09	24 A. I don't recall. If it's not in the text, I	24	A. -- because they're so different.
112:09	25 have no recollection.	25	Q. Did you discuss anything else?
	119		121
12:00	1 Q. Okay. Let's back up just a little bit.	1	A. That's about -- that's all Joe really wanted
12:00	2 You have a string here in these text messages	2	to discuss with me.
12:00	3 that says, did it, ha ha, was brutal.	3	Q. So did it come up at all the fact that you
12:00	4 A. Uh-huh.	4	were seeking employment at Consilium?
12:00	5 Q. What do you mean by that?	5	A. Sure.
12:00	6 A. I mean, there were things I enjoyed about	6	Q. And what was discussed about the fact that you
12:00	7 Merritt Hawkins. So it's -- it's always tough to quit.	7	were seeking employment from Consilium?
12:00	8 Q. And that's what you're referring to when you	8	A. That I was seeking employment from Consilium.
12:00	9 use --	9	I don't know.
12:00	10 A. Quitting my job.	10	Q. I'm just trying to ascertain, did you talk
12:00	11 Q. -- the term brutal?	11	about what folks got paid at Consilium, did you talk
12:00	12 A. Uh-huh.	12	about how many recruiter options were open, or did you
12:00	13 Q. What did you discuss with Mr. Bowden on	13	just all sit there in a room and stare at each other?
12:00	14 September the 25th when you had lunch?	14	A. No, we didn't -- Joe talked. I don't know if
12:00	15 A. Our kids and the Dallas Cowboys mostly.	15	you've met Joe. Joe talked. And -- and payment or
12:00	16 Q. Did you talk about Consilium?	16	nothing like that came into it. It wasn't time to talk
12:00	17 A. We could have.	17	about money.
12:00	18 Q. Is it likely that you did?	18	Q. Okay. Where did this meeting take place?
12:00	19 A. It's likely.	19	A. In Joe's office.
12:00	20 Q. And if you had been discussing Consilium,	20	Q. And was that at the Consilium's offices --
12:00	21 would you have been discussing your potential employment	21	A. Yes.
12:00	22 at Consilium?	22	Q. -- or was that at a different location?
12:00	23 A. On September the 25th, I was probably -- yeah,	23	A. I'm sorry. Yes.
12:00	24 I'm sure.	24	Q. Can you look with me on page Gresham 69. So
12:00	25 Q. When was your next meeting with Consilium or	25	back to these text --

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	122	124
12:03	1 A. Yes.	1 Q. So there was at least one other meeting?
12:03	2 Q. -- messages.	2 A. There was one other meeting.
12:03	3 And if you'll look at the string that starts	3 MS. NOWAK: Lezley, what's our next
12:03	4 September 26th.	4 exhibit?
12:03	5 A. Okay.	5 THE REPORTER: 21.
12:03	6 Q. There's a reference in here -- it says, Not	6 MS. NOWAK: Okay.
12:03	7 meeting with Joe 'til next week. He has to meet his	7 (Exhibit No. 21 marked.)
12:03	8 attorney in the a.m.	8 Q. (BY MS. NOWAK) Mr. Gresham, I'm going to hand
12:03	9 A. So I didn't meet with him that week.	9 you what's going to be marked as Deposition Exhibit
12:03	10 Q. So do you think it would have been the	10 No. 21.
12:03	11 following rowing week, perhaps?	11 Does this help refresh your recollection about
12:03	12 A. It says there next Thursday at noon.	12 the timing of those meetings?
12:03	13 Q. Okay.	13 A. Okay. It was after -- it must have been
12:03	14 A. So I suppose that's when it was.	14 October 3rd or 4th that I met with them -- oh.
12:03	15 Q. So does this refresh your recollection that	15 MR. VOLNEY: Take your time.
12:03	16 you didn't meet with Mr. Baade and Mr. Hawkins on	16 THE WITNESS: Yeah, sure.
12:03	17 September 27th, but it would have been the following	17 A. October 3rd, I met with Kyle, John, and Amy.
12:03	18 week which I believe would have been Thursday, October	18 Q. (BY MS. NOWAK) Okay. And it says that on
12:03	19 the 2nd?	19 Tuesday --
12:03	20 A. That -- yes.	20 A. Oh --
12:03	21 Q. Okay. What does this mean, he has to meet his	21 Q. -- you met with Joe and Matt?
12:04	22 attorney in the a.m.?	22 A. -- I see. Yeah, I met with Joe on Tuesday.
12:04	23 A. I don't know. That's probably why the meeting	23 So obviously it was moved from Thursday to Tuesday, the
12:04	24 got cancelled.	24 Joe Hawkins meeting.
12:04	25 Q. Who told you that he had to meet with his	25 Q. So in terms of timing, it appears that you had
	123	125
12:04	1 attorney?	1 a meeting with Joe and Matt on Tuesday, October 2nd.
12:04	2 A. Probably his secretary. His secretary -- I	2 The following day, you came back for a subsequent
12:04	3 don't recall this stuff. His secretary probably called	3 meeting with Kyle Etter, John Moberly, and Amy Gentile;
12:04	4 and said, hey, Joe's got an appointment with his	4 is that correct?
12:04	5 attorney, can we move it to next Thursday.	5 A. Yes.
12:04	6 Q. Did they tell you at that time who Joe's	6 Q. Okay. Did you ever meet with anyone else or
12:04	7 attorney was --	7 speak with anyone else at Consilium prior to accepting
12:04	8 A. No.	8 an offer of employment?
12:04	9 Q. -- that he was meeting with?	9 A. I probably shook almost everyone's hand there
12:04	10 A. No.	10 as I walked through, but no sit down meetings.
12:04	11 Q. Did anyone tell you that Joe was meeting with	11 Q. What was the substance of your meeting with
12:04	12 his lawyers and that it had anything to do with your	12 Kyle, John, and Amy?
12:04	13 employment agreement?	13 A. Wanted to tell me about their specific
12:04	14 A. No.	14 divisions. They each ran a division.
12:04	15 Q. Did anybody say that Joe was meeting with his	15 Q. And was it your understanding during each of
12:04	16 lawyers and that it had something to do with MHA?	16 the meetings that you were having that you were
12:04	17 A. No.	17 discussing with Consilium your potential employment at
12:04	18 Q. After this particular meeting with Joe and	18 Consilium?
12:04	19 Matt Baade on October the 22nd (sic), did you have any	19 A. Sure.
12:04	20 other meetings with Consilium?	20 Q. And were Kyle, John, and Amy encouraging you
12:04	21 A. Again, I think if that was on a Thursday, it	21 to come to work for Consilium? Did they tell you it was
12:04	22 may have been the next day that I met with John and	22 a great place to work, they thought you'd really like
12:04	23 Kyle Etter. And there's another name, Kyle Etter. But	23 it?
12:03	24 it could have been the -- the Friday after that. I	24 A. Yes.
12:03	25 don't remember. But yes, I did meet with somebody else.	25 Q. Do you recall when you received your formal

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	130	132
12:00	1 MS. NOWAK: -- your preference?	1 would have a copy of that employment application?
12:00	2 MR. VOLNEY: Let's take a break.	2 <b>A. I'm sure they do.</b>
12:00	3 THE VIDEOGRAPHER: We're off the record	3 Q. But you, in connection with this lawsuit, did
12:00	4 at 12:10 p.m.	4 not request a copy from Consilium?
13:05	5 (Lunch break taken from 12:10 to 1:05 p.m.)	5 <b>A. No. That's Consilium's.</b>
13:05	6 THE VIDEOGRAPHER: We're on the record at	6 Q. And you haven't provided or produced a copy to
13:05	7 1:05 p.m. This is Tape 3.	7 me in this litigation?
13:05	8 Q. (BY MS. NOWAK) Mr. Gresham, we're back from a	8 <b>A. No.</b>
13:05	9 brief lunch break. And before we move much further, I	9 MS. NOWAK: Lezley, what number are we
13:05	10 want to close out just a few topics with you.	10 at?
13:06	11 We talked earlier about Ms. Elliott and	11 THE REPORTER: I believe 22 -- no,
13:06	12 Mr. Dodson and you said that you had spoken with them	12 there's a 22.
13:06	13 prior to leaving MHA about the fact you were considering	13 23.
13:06	14 employment with Consilium?	14 (Exhibit No. 23 marked.)
13:06	15 <b>A. Yes.</b>	15 Q. (BY MS. NOWAK) Mr. Gresham, I've handed you
13:06	16 Q. Did you talk with anyone else besides	16 what's been marked as Deposition Exhibit No. 23. And
13:06	17 Ms. Elliott or Mr. Dodson --	17 this is a -- a cover e-mail that you sent to
13:06	18 <b>A. I don't --</b>	18 Christina Stephens attaching your offer and background
13:06	19 Q. -- that you can recall?	19 check.
13:06	20 <b>A. I do not recall.</b>	20 And if we turn to the last page of this
13:06	21 Q. Is it possible that you talked with others?	21 exhibit, is this a true and correct copy of your offer
13:06	22 <b>A. It is possible.</b>	22 letter that you signed and sent back to Consilium?
13:06	23 Q. In connection with your employment at	23 <b>A. Yes.</b>
13:06	24 Consilium, you provided the names of certain references	24 Q. Okay. How were you compensated while you were
13:06	25 for Consilium to contact.	25 at Consilium? Is it consistent with what is contained
	131	133
13:06	1 Do you recall the names of the references that	1 in this offer letter?
13:06	2 you provided?	2 <b>A. Salary plus commission, yes.</b>
13:06	3 <b>A. I don't.</b>	3 Q. And how did you calculate your commission?
13:06	4 Q. Is it possible that it was Ms. Elliott and	4 <b>A. My commission was upon days worked by</b>
13:06	5 Mr. Dodson?	5 <b>physicians.</b>
13:06	6 <b>A. No.</b>	6 Q. Is there an actual formula or do we just --
13:06	7 Q. Do you think it would have been other MHA	7 <b>A. There is. I don't remember what it was.</b>
13:06	8 employees?	8 Q. Okay. Just something that Consilium had --
13:06	9 <b>A. I don't remember putting an MHA employee. I</b>	9 did they make you aware of what the formula would be
13:06	10 <b>may have. I mean, I'm trying to remember the</b>	10 before you came to work for them?
13:06	11 <b>application because I may have had to put a reference</b>	11 <b>A. I don't recall if it was before I came to work</b>
13:06	12 <b>from my previous position.</b>	12 <b>or the first day I worked.</b>
13:06	13 THE VIDEOGRAPHER: I'm sorry. Are you	13 Q. In addition to the salary and your
13:06	14 wearing that -- that microphone?	14 commissions, were you also entitled to any bonuses?
13:06	15 THE WITNESS: Is it not high enough?	15 <b>A. Well, when I started, they gave me 1,000 per</b>
13:06	16 THE VIDEOGRAPHER: Oh, okay. No. I'm	16 <b>month for two months. That's it, you know, besides</b>
13:06	17 good. Never mind. I'm sorry.	17 <b>salary and commission.</b>
13:06	18 THE WITNESS: You got it?	18 Q. What was the total amount that you earned from
13:06	19 THE VIDEOGRAPHER: I've got it.	19 Consilium in 2013?
13:06	20 <b>A. I don't remember who I put on there.</b>	20 <b>A. In 2013, I didn't work. I would guess 30 to</b>
13:06	21 Q. (BY MS. NOWAK) But it's possible, then, that	21 <b>\$40,000-something through September, maybe 50.</b>
13:06	22 your references would have been listed on your	22 Q. Now, Mr. Bowden --
13:06	23 employment application?	23 <b>A. Gresham.</b>
13:06	24 <b>A. They should have been.</b>	24 Q. Oh, my gosh. I'm so sorry, Mr. Gresham.
13:06	25 Q. Okay. And it's your testimony that Consilium	25 <b>A. That's okay.</b>

13:10 1 now with anyone else about the deposition? While we  
13:10 2 were on the lunch break, did you talk with anyone  
13:10 3 besides Mr. Volney about your deposition?  
13:10 4 **A. Mr. Volney asked me to keep my hands from my**  
13:10 5 **face.**  
13:10 6 MR. VOLNEY: Okay. You're technically  
13:10 7 not supposed to tell her what we talked about, but  
13:10 8 I'll -- she's heard that one, so --  
13:10 9 THE WITNESS: Yeah.  
13:10 10 MS. NOWAK: And I'm happy for us to mark  
13:10 11 it.  
13:12 12 MR. VOLNEY: That's okay.  
13:12 13 Q. (BY MS. NOWAK) I'm actually -- I don't want  
13:12 14 to know anything you talked about with Mr. Volney.  
13:12 15 I'm asking have you talked with anyone else  
13:12 16 besides Mr. Volney?  
13:12 17 **A. No.**  
13:12 18 Q. Did you text with anyone else about the  
13:12 19 litigation or this deposition while we were on the lunch  
13:12 20 break?  
13:13 21 **A. I called my wife.**  
13:13 22 Q. Okay. And what did you tell your wife about  
13:13 23 the deposition?  
13:13 24 **A. How much longer it would probably be.**  
13:13 25 Q. Okay. And what did you tell your wife about

1 course of your employment with Consilium?  
2 **A. Drew -- and I can't remember his last name --**  
3 **was a former employee.**  
4 Q. Anyone else that you --  
5 **A. I --**  
6 Q. -- recall?  
7 **A. -- can't think of anyone else, but I could be**  
8 **wrong.**  
9 Q. So it's possible that there are others?  
10 **A. Sure.**  
11 Q. Is it likely that there are others?  
12 MR. VOLNEY: Objection; form.  
13 **A. Yeah. I don't know if it's -- I don't know if**  
14 **it's likely. I don't...**  
15 Q. (BY MS. NOWAK) Okay. I'm going to now ask  
16 you to go back to your employment agreement.  
17 **A. Okay.**  
18 Q. We talked a while back fairly extensively  
19 about this Paragraph 5 and the Subsections A, B, and C.  
20 And you and I were discussing the restrictions in there  
21 and that at the time of signing, that you agreed that --  
22 that the restrictions in this covenant were reasonable;  
23 is that correct?  
24 **A. Yes.**  
25 Q. Okay. And as we sit here today, though, your

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13:18	1	were required to sign dealing with information systems	1	referring to?
13:18	2	or the protection of Consilium's information?	2	<b>A. The -- the juice that goes in the E-cigarette</b>
13:18	3	<b>A. I don't recall, honestly.</b>	3	<b>or the nicotine sensation device.</b>
13:18	4	Q. Mr. Gresham, on what date did you leave your	4	Q. And who do you market your products to?
13:18	5	employment with Consilium?	5	<b>A. Stores.</b>
13:18	6	<b>A. I don't know. September -- I mean, I'm just</b>	6	Q. What is your relationship with Consilium at
13:18	7	<b>guessing if I -- September 20th.</b>	7	this point in time? Did you part on good terms?
13:19	8	MR. VOLNEY: Don't guess.	8	<b>A. Absolutely.</b>
13:19	9	<b>A. I don't know. September something.</b>	9	Q. And I believe you told me earlier that you
13:19	10	Q. (BY MS. NOWAK) September of what year?	10	sent a resignation e-mail or letter to Mr. Moberly.
13:19	11	<b>A. 2013.</b>	11	Do you recall what you told Mr. Moberly at the
13:19	12	Q. And when you left Consilium, what did you go	12	time that you were resigning?
13:19	13	to do? Was it a voluntary separation?	13	<b>A. Exactly what I was doing, that I had another</b>
13:19	14	<b>A. Yeah. I -- I own another company.</b>	14	<b>venture and I couldn't -- I didn't want to try to put</b>
13:19	15	Q. So it's your testimony here today that you	15	<b>too many eggs in one basket. It wasn't fair.</b>
13:19	16	voluntarily resigned, Consilium didn't fire you, you	16	Q. Do you know how many employees Consilium had
13:19	17	elected to go pursue other opportunities?	17	at the time of your departure in September of 2013?
13:19	18	<b>A. Yes.</b>	18	<b>A. I do not. And I don't want to guess.</b>
13:19	19	Q. Okay. So -- and the other opportunity that	19	Q. Can you give me a ballpark? I mean, are we
13:19	20	you went to pursue is a new company?	20	talking 50, 60 --
13:19	21	<b>A. Yes.</b>	21	<b>A. Less than 50.</b>
13:19	22	Q. What is the name of that company?	22	Q. -- 70?
13:19	23	<b>A. SBKC Products.</b>	23	<b>A. Less than 50.</b>
13:19	24	Q. And when did you form that company?	24	Q. Less than 50 at the time that you left in
13:19	25	<b>A. I actually formed it as a sole proprietorship</b>	25	September of 2013?
	143		145	
13:19	1	<b>in June as SB Products and moved to an LLC -- no. In</b>	1	<b>A. I believe less than 50, but I think it was</b>
13:19	2	<b>July. I'm sorry.</b>	2	<b>close.</b>
13:19	3	Q. In July of what year?	3	Q. And of the 50 folks that you recall being
13:20	4	<b>A. 2013.</b>	4	there, do you recall how many of them used to work for
13:20	5	<b>Changed it to SBKC Products, an LLC, in</b>	5	MHA and/or for a company that's part of the AMN family
13:20	6	<b>December of 2013.</b>	6	of companies?
13:20	7	Q. So before you ever resigned from Consilium,	7	<b>A. I do not.</b>
13:28	8	you had your company up and running and ready for you to	8	Q. I'm going to hand you what's been previously
13:28	9	move to? You had another job to immediately	9	marked as Exhibit 9.
13:28	10	transition --	10	<b>A. Sure.</b>
13:28	11	<b>A. I had --</b>	11	Q. This is a document that Mr. Bowden produced to
13:28	12	Q. -- to?	12	us, the employee contact list.
13:28	13	<b>A. I had a side job that became a full-time job.</b>	13	Is this a complete listing of all the
13:28	14	Q. And how is your company doing?	14	employees of Consilium at the time that you were
13:28	15	<b>A. Good.</b>	15	departing?
13:28	16	Q. And what products does your company sell?	16	<b>A. I really can't tell you. I -- I thought there</b>
13:28	17	<b>A. The -- the juice for E-cigarettes.</b>	17	<b>were more. This doesn't look like that many. But maybe</b>
13:28	18	Q. And can you tell us what E-cigarettes are?	18	<b>so.</b>
13:28	19	<b>A. Vapor -- personal vaporizers. I mean --</b>	19	Q. Do you recognize the names on this list as
13:28	20	Q. I need --	20	being employees of Consilium or former employees?
13:28	21	<b>A. -- they --</b>	21	<b>A. I recognize some of them as being former</b>
13:28	22	Q. -- to establish for the record, I mean, what	22	<b>employees. This is a very old list.</b>
13:28	23	is an E-cigarette, what is --	23	Q. Okay. Can you tell me in looking down this
13:28	24	<b>A. Nicotine sensation device.</b>	24	list any of the names that you recognize who are folks
13:28	25	Q. Okay. And what is the juice that you're	25	that used to work at MHA and/or an AMN Healthcare

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<p>13:23 1 company?</p> <p>13:23 2 A. This is great. I've already got a cheat</p> <p>13:23 3 sheet.</p> <p>13:23 4 I know that Matt worked for Staff Care. Kevin</p> <p>13:23 5 at some point worked for Merritt Hawkins. Brent worked</p> <p>13:23 6 at Staff Care.</p> <p>13:23 7 THE REPORTER: Slow down for me just a</p> <p>13:23 8 little bit.</p> <p>13:23 9 THE WITNESS: Oh, sure.</p> <p>13:23 10 THE REPORTER: Kevin worked where?</p> <p>13:23 11 THE WITNESS: Kevin worked at Merritt</p> <p>13:23 12 Hawkins.</p> <p>13:24 13 A. Brent worked at Staff Care. I think</p> <p>13:24 14 Matt Kennedy worked at Staff Care. I know he worked for</p> <p>13:24 15 an AMN company. John Moberly worked for an AMN company,</p> <p>13:24 16 I believe at first, Staff Care. I don't know.</p> <p>13:24 17 Kyle Etter worked for Staff Care. I did not have a</p> <p>13:24 18 relationship with Lyndsey Nix. She didn't work there</p> <p>13:24 19 when I worked there, but she worked for Merritt Hawkins.</p> <p>13:24 20 I don't know about Tisha. Landon worked for Staff Care.</p> <p>13:24 21 Amy Crowdis worked for Staff Care. I don't know about</p> <p>13:24 22 Michael Lawless. Monique worked for Joe. Greg Ellis,</p> <p>13:24 23 I -- yeah, I think he did. He worked in accounting for</p> <p>13:24 24 AMN. I don't know about Jessica Ferguson. And I</p> <p>13:24 25 believe Christina worked for Staff Care.</p>	<p style="text-align: right;">146</p>	<p style="text-align: right;">148</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall what the name of the database</p> <p>3 that Consilium uses is?</p> <p>4 A. I do not. It was web based. I don't know</p> <p>5 what it was called.</p> <p>6 Q. If I represented to you that it was called</p> <p>7 Blue Sky, does that sound right to you?</p> <p>8 A. That's it.</p> <p>9 Q. While you worked at Consilium, did you have</p> <p>10 access to Blue Sky?</p> <p>11 A. I did.</p> <p>12 Q. And did you use Blue Sky as part of and/or to</p> <p>13 complete your job for Consilium?</p> <p>14 A. A very small part, yes.</p> <p>15 Q. When you say a very small part, what small</p> <p>16 part was -- was it of your job with Consilium?</p> <p>17 A. That's where physicians were. I didn't use it</p> <p>18 that much because it was small.</p> <p>19 Q. So what information would you have recorded in</p> <p>20 Blue Sky?</p> <p>21 A. Physicians' names, phone numbers, and</p> <p>22 marketing with hospitals' names and phone numbers. That</p> <p>23 wasn't my job.</p> <p>24 Q. So you said it was only a very small part. So</p> <p>25 did you mostly record information about the activities</p>
<p>13:24 1 Q. (BY MS. NOWAK) Other than the folks that are</p> <p>13:24 2 circled who Mr. Bowden had previously identified, are</p> <p>13:24 3 there any others that you know worked for MHA or an AMN</p> <p>13:24 4 family company?</p> <p>13:24 5 A. Oh, there is one other.</p> <p>13:24 6 Q. Okay.</p> <p>13:24 7 A. Brian MacInnis worked for Merritt Hawkins.</p> <p>13:24 8 Q. Any others on this list?</p> <p>13:24 9 A. I don't -- no, ma'am.</p> <p>13:24 10 Q. Okay. So you would agree with me that over</p> <p>13:24 11 50 percent of the people on this list who are listed as</p> <p>13:24 12 being employees of Consilium Staffing came from MHA or</p> <p>13:24 13 the AMN family of companies?</p> <p>13:24 14 A. Yes, on this list. This list is very old.</p> <p>13:24 15 This list is from before I worked there.</p> <p>13:25 16 Q. But you would still agree with me that over</p> <p>13:25 17 50 percent of these folks came from MHA or AMN?</p> <p>13:25 18 A. Yes.</p> <p>13:25 19 Q. At the time that you worked at Consilium, is</p> <p>13:25 20 it true that Consilium hired mostly folks who had prior</p> <p>13:25 21 experience of some nature or type in the medical</p> <p>13:25 22 staffing industry?</p> <p>13:25 23 A. Yes.</p> <p>13:25 24 Q. So they would have worked somewhere else that</p> <p>13:25 25 did staffing, and then would have come to Consilium?</p>	<p style="text-align: right;">147</p>	<p style="text-align: right;">149</p> <p>1 that you were doing for Consilium somewhere else?</p> <p>2 A. No. I just found doctors on the internet to</p> <p>3 call.</p> <p>4 Q. And then did you record the doctors that you</p> <p>5 were contacting in Blue Sky?</p> <p>6 A. Sometimes.</p> <p>7 Q. But not all the time?</p> <p>8 A. I'm horrible at recordkeeping.</p> <p>9 Q. So most of the time, you didn't keep track of</p> <p>10 who you were contacting on behalf of Consilium?</p> <p>11 A. On paper.</p> <p>12 Q. And what happened -- what happened to your</p> <p>13 paper records?</p> <p>14 A. They had -- when I left, they had everything.</p> <p>15 I didn't take anything unless I had thrown it away. You</p> <p>16 know, it was just names.</p> <p>17 Q. If you had used Blue Sky, let's talk kind of</p> <p>18 about --</p> <p>19 A. Okay.</p> <p>20 Q. -- what Blue Sky is for.</p> <p>21 A. Sure.</p> <p>22 Q. Do you know what type of information is</p> <p>23 contained in Blue Sky?</p> <p>24 A. Well, I know -- yes. Doctors, PAs, whatever,</p> <p>25 you know, medical professionals' information, hospitals'</p>

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<p style="text-align: right;">150</p> <p>13:23 1 and clinics' information, and then job information, like</p> <p>13:23 2 people that are working that are married together and --</p> <p>13:23 3 I mean, pretty much everything is contained in Blue Sky.</p> <p>13:23 4 Q. Okay. So it would have a -- it does have a</p> <p>13:23 5 list of Consilium's clients?</p> <p>13:23 6 A. Yes.</p> <p>13:23 7 Q. And when you say it has client information,</p> <p>13:23 8 what type of information are we talking about? You</p> <p>13:23 9 know, just name, address, phone number or is there</p> <p>13:23 10 additional information that's pertinent to the client</p> <p>13:23 11 such as, you know, bill rates, pay rates? I mean, what</p> <p>13:23 12 other -- what information is there about clients?</p> <p>13:23 13 A. I never dug too deep into Blue Sky because I</p> <p>13:23 14 didn't need that information. So all I saw was</p> <p>13:23 15 addresses, phone numbers.</p> <p>13:23 16 Q. Was there other information contained in Blue</p> <p>13:23 17 Sky, to your knowledge, though?</p> <p>13:23 18 A. Yes.</p> <p>13:23 19 Q. What other information?</p> <p>13:23 20 A. I don't know.</p> <p>13:23 21 Q. You just know that it --</p> <p>13:23 22 A. Yeah.</p> <p>13:23 23 Q. -- was there?</p> <p>13:23 24 A. I didn't use it for that.</p> <p>13:23 25 Q. Was one of the reasons that Consilium had Blue</p>	<p style="text-align: right;">152</p> <p>1 A. It may have. I don't know.</p> <p>2 Q. Okay. What about things like bill rates and</p> <p>3 pay rates then?</p> <p>4 A. Maybe.</p> <p>5 Q. Okay.</p> <p>6 A. I didn't --</p> <p>7 Q. You never --</p> <p>8 A. That was not my job.</p> <p>9 Q. -- used it for that?</p> <p>10 Did Consilium consider its Blue Sky database</p> <p>11 to be confidential?</p> <p>12 A. I'm sure.</p> <p>13 Q. It -- was it password protected?</p> <p>14 A. It was password protected.</p> <p>15 Q. Consilium doesn't just hand out --</p> <p>16 A. No.</p> <p>17 Q. -- that information to folks out on the</p> <p>18 street, they consider it to be their confidential</p> <p>19 information, the data that's in Blue Sky?</p> <p>20 A. Yes.</p> <p>21 Q. Are there any other security measures at</p> <p>22 Consilium other than password protection on computers?</p> <p>23 A. I -- the door has a lock. I don't -- I don't</p> <p>24 know.</p> <p>25 Q. Other the door having a lock and the</p>
<p style="text-align: right;">151</p> <p>13:26 1 Sky to help keep track of the clients and the physicians</p> <p>13:26 2 that it was contacting?</p> <p>13:26 3 A. Sure.</p> <p>13:26 4 Q. But you didn't use it for that purpose?</p> <p>13:26 5 A. I would put clients -- doctors in.</p> <p>13:26 6 Q. Sometimes?</p> <p>13:26 7 A. Sometimes. But when I say on paper, we had</p> <p>13:26 8 other lists that we called from that they had paid for.</p> <p>13:26 9 So all -- I think -- I think all of those doctors were</p> <p>13:26 10 already in there. So there would be no reason for me to</p> <p>13:26 11 put them in.</p> <p>13:26 12 Q. Did you check to see if they were already in</p> <p>13:26 13 there?</p> <p>13:26 14 A. I would some, but I knew they were already in</p> <p>13:26 15 there.</p> <p>13:26 16 Q. And when you contacted, did you record in Blue</p> <p>13:26 17 Sky that -- that you had actually contacted them?</p> <p>13:26 18 A. I would. I don't -- I don't -- yeah. I don't</p> <p>13:26 19 understand how this is pertinent. I mean, yes.</p> <p>13:26 20 Q. Would Blue Sky also give us information about,</p> <p>13:26 21 for instance, you know, the contract terms that</p> <p>13:26 22 Consilium might have with a client?</p> <p>13:26 23 A. I believe it would.</p> <p>13:26 24 Q. And the profit margin that Consilium would be</p> <p>13:26 25 making?</p>	<p style="text-align: right;">153</p> <p>1 passwords -- the computers having passwords, is there</p> <p>2 anything else?</p> <p>3 A. There may be a security system. I'm sure</p> <p>4 there was a security system.</p> <p>5 Q. Video cameras?</p> <p>6 A. I think we had -- I think we had key fobs.</p> <p>7 But when -- when I got to work, the door was always</p> <p>8 open. I think the key fob only controlled the</p> <p>9 downstairs of the entire building.</p> <p>10 Q. Do you know if you're able to print</p> <p>11 information from Blue Sky?</p> <p>12 A. Yes, you are.</p> <p>13 Q. Do you know if you're able to run reports?</p> <p>14 A. Yes, you are.</p> <p>15 Q. We talked earlier about whether or not you had</p> <p>16 contacted any clients or doctors that you worked with at</p> <p>17 MHA while you were at Consilium.</p> <p>18 A. Uh-huh.</p> <p>19 Q. And your testimony, as we sit here today, is</p> <p>20 that you have not --</p> <p>21 A. Not --</p> <p>22 Q. -- correct?</p> <p>23 A. -- to my knowledge.</p> <p>24 Q. So I'd like for you to clarify.</p> <p>25 What do you mean by to your knowledge? Did</p>

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13:28	1 you look at any documents to ascertain whether you had	1 Q. Okay. And do you recall how long you stayed?	
13:28	2 contacted any clients or documents or are you going	2 <b>A. I was there about, at the most, 30 minutes.</b>	
13:28	3 solely off your -- you know, your memory?	3 Q. So it would not have been several hours?	
13:28	4 <b>A. Just my gut, just my memory.</b>	4 <b>A. No.</b>	
13:28	5 Q. Do you recall the number of clients that you	5 Q. Do you recall how you accessed MHA's offices?	
13:28	6 worked with while you were at Consilium?	6 <b>A. Front door.</b>	
13:28	7 <b>A. I worked with no clients.</b>	7 Q. Okay. Did you have to use a security badge to	
13:28	8 Q. Okay. The number of doctors?	8 get in?	
13:28	9 <b>A. No.</b>	9 <b>A. Yes.</b>	
13:28	10 Q. Can you ballpark it for me?	10 Q. And did you use the security badge that MHA	
13:28	11 <b>A. No.</b>	11 had issued to you for your employment?	
13:28	12 Q. Do you remember the names of all of them?	12 <b>A. Of course, yes.</b>	
13:28	13 <b>A. No. I worked with over -- I couldn't even</b>	13 Q. Did you also come to the office on Saturday,	
13:28	14 <b>ballpark it, that I actually -- no. Well, I could. I</b>	14 September the 22nd?	
13:28	15 <b>mean, the doctors that I called and the doctors that I</b>	15 <b>A. Not that I recall.</b>	
13:28	16 <b>worked with are two completely different things. The</b>	16 Q. Is it possible that you did?	
13:28	17 <b>doctors I worked with, 50.</b>	17 <b>A. Probably not.</b>	
13:28	18 Q. The doctors that you called?	18 Q. Was there anyone else in the office when you	
13:28	19 <b>A. I can't ballpark it. I mean, I can't --</b>	19 arrived on -- on Sunday, September the 23rd?	
13:28	20 Q. Thousands?	20 <b>A. There was at least one other person. I do not</b>	
13:28	21 <b>A. Thousands.</b>	21 <b>know his name. He was a marketer.</b>	
13:28	22 Q. Let's go back now and talk about Sunday,	22 Q. So he would have been on your floor?	
13:28	23 September the 23rd.	23 <b>A. On my floor.</b>	
13:28	24 <b>A. Okay.</b>	24 Q. In the same section of the building as you?	
13:28	25 Q. So we've kind of talked about the timing. You	25 <b>A. Yes.</b>	
	155		157
13:28	1 know, you met with Consilium again on Friday,	1 Q. But you don't recall the name?	
13:28	2 September 21st. Saturday was September the 22nd, and	2 <b>A. No.</b>	
13:30	3 you may have made the decision then that you were going	3 Q. So after you badged into the offices, what did	
13:30	4 to be resigning. But then we -- we get to Sunday,	4 you do next?	
13:30	5 September 23rd and you've made the decision and you've	5 <b>A. Went to my computer -- well, got all my stuff,</b>	
13:30	6 decided you're going to go up to MHA's offices because	6 <b>put it in a box, cleaned off my desktop, took my</b>	
13:30	7 you were not going to work for them --	7 <b>documents folder, put it in the trash, took my desktop</b>	
13:30	8 <b>A. Uh-huh.</b>	8 <b>and put it in the trash.</b>	
13:30	9 Q. -- anymore; is that correct?	9 Q. Okay. Let's walk back through each of those.	
13:30	10 <b>A. Yes.</b>	10 So you got a box and you cleared off your	
13:30	11 Q. Okay. And Sunday's not usual business hours	11 desktop. And by desktop, you literally mean the	
13:30	12 for MHA, is it? The office isn't full and buzzing on --	12 physical surface --	
13:30	13 <b>A. The office --</b>	13 <b>A. Desktop.</b>	
13:30	14 Q. -- Sunday?	14 Q. -- of your desk?	
13:30	15 <b>A. The office is not full and buzzing. There</b>	15 So what did you take off of your desktop and	
13:30	16 <b>were no business hours as a recruiter at MHA. I mean,</b>	16 put in this box?	
13:30	17 <b>you worked when you worked.</b>	17 <b>A. Pictures of myself, pictures of my family, my</b>	
13:30	18 Q. But was the office generally open, like, on	18 <b>personal belongings. That's the best way to say it.</b>	
13:30	19 Monday to Friday? I mean, the office wasn't staffed on	19 Q. Anything that belonged to MHA, any documents,	
13:30	20 Saturdays and Sundays?	20 anything that related at all to doctors or medical	
13:30	21 <b>A. Right, it was not.</b>	21 staffing?	
13:30	22 Q. And do you recall -- I think we've already	22 <b>A. Absolutely not.</b>	
13:30	23 discussed -- what time you arrived?	23 Q. Any scripts, any training materials?	
13:30	24 <b>A. I did not recall. I knew it was in the</b>	24 <b>A. (Witness shakes head.)</b>	
13:30	25 <b>afternoon. You said 4:00.</b>	25 Q. The only thing that went in that box was	

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13:32	1 pictures and other similar personal effects?	1	MR. VOLNEY: Objection; form.
13:32	2 A. Yes.	2	A. Yeah. I cleaned off my terminal so the next
13:32	3 Q. Okay. And then after that, you accessed your	3	person would have a clean desktop.
13:32	4 MHA computer?	4	Q. (BY MS. NOWAK) Did you open any files while
13:32	5 A. It could have been after that or before or	5	you were sitting at your MHA computer?
13:32	6 during. I mean, it could have been the same time.	6	A. I don't recall. I put everything in the
13:32	7 Q. But you did access --	7	trash.
13:32	8 A. Yes.	8	Q. So is it possible that you opened files?
13:32	9 Q. -- your MHA computer?	9	MR. VOLNEY: Objection; form.
13:32	10 And how did you access that computer?	10	MS. NOWAK: What's the basis for your
13:32	11 A. What do --	11	objection?
13:32	12 Q. Did you have to use your security credentials	12	MR. VOLNEY: You're asking him to
13:32	13 that MHA had assigned to you? You had --	13	speculate.
13:32	14 A. Oh, we had --	14	A. I mean, this is -- this is -- I know why he's
13:32	15 Q. -- to use --	15	objecting, because I -- I went in there to clean off my
13:32	16 A. We had a password.	16	desktop to clean it for the next person. I don't
13:32	17 Q. -- a password and your unique user name?	17	remember. I put everything in the trash. It's...
13:32	18 A. Yes.	18	Q. (BY MS. NOWAK) So it's your testimony, as we
13:32	19 Q. And again, at this juncture, you had already	19	sit here today, that you don't recall whether or not you
13:32	20 decided to resign and that you were no longer going to	20	did open files?
13:32	21 be working for MHA?	21	A. Right.
13:32	22 A. Yes.	22	Q. So it's possible that you did and it's also
13:32	23 Q. Just so hopefully I can cut this down a little	23	possible that you didn't?
13:32	24 bit, I'm going to go very quickly through things that I	24	A. It's more possible that I didn't. But yes.
13:32	25 think that you have already admitted about that Sunday.	25	MR. VOLNEY: That you did not?
	159		161
13:33	1 A. Sure.	1	THE WITNESS: That I did not.
13:33	2 Q. So you admit that you intentionally accessed	2	MR. VOLNEY: Thank you.
13:33	3 MHA's offices?	3	Q. (BY MS. NOWAK) Do you have a copy of the
13:33	4 A. Yes.	4	request for admission over there? I don't know if we've
13:33	5 Q. You admit that you intentionally accessed	5	marked one yet.
13:33	6 MHA's computers?	6	MS. NOWAK: Why don't we do that real
13:33	7 A. Yes.	7	fast, Lezley. I forget what our next number is.
13:33	8 Q. And just to clarify, on your MHA computer, you	8	THE REPORTER: Okay. It's 24.
13:33	9 were able to send e-mail from that computer?	9	(Exhibit No. 24 marked.)
13:33	10 A. Yes.	10	Q. (BY MS. NOWAK) And Mr. Gresham, I'm not
13:33	11 Q. It was hooked up to the internet?	11	trying to be difficult, but if you'll turn with me to
13:33	12 A. Yes.	12	Page 28. I'm just trying to get through the things that
13:33	13 Q. And you had previously on that computer sent	13	you've already admitted.
13:33	14 e-mails across state lines?	14	A. Sure.
13:33	15 A. Yes.	15	Q. Okay. So if we turn to Page 28 and we look at
13:33	16 Q. And you admit that you purposely accessed	16	the very top, Request for Admission No. 114, it says,
13:33	17 files on your MHA computer --	17	Admit that on September 23rd, 2012, you accessed your
13:33	18 MR. VOLNEY: Objection; form.	18	Merritt Hawkins work computer.
13:33	19 Q. (BY MS. NOWAK) -- on that Sunday?	19	A. Yes.
13:34	20 MR. VOLNEY: Objection; form.	20	Q. And you admitted to that?
13:34	21 A. I cleaned up -- I cleaned off my terminal.	21	A. Right.
13:34	22 Q. (BY MS. NOWAK) But in doing that, you had to	22	Q. Okay. And then if we look at the next one, it
13:34	23 actually go in and access, you had to select files --	23	says, Admit that on or about September 23rd, 2012, you
13:34	24 MR. VOLNEY: Objection --	24	deleted files on your Merritt Hawkins work computer; is
13:34	25 Q. (BY MS. NOWAK) -- correct?	25	that correct?

42 (Pages 162 to 165)

43 (Pages 166 to 169)

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<p>13:46 1 Q. Did you also copy all these documents?</p> <p>13:46 2 A. No.</p> <p>13:46 3 Q. You didn't hook a USB drive up to your</p> <p>13:46 4 computer and --</p> <p>13:46 5 A. You can't -- you can't hook a USB drive up to</p> <p>13:46 6 a computer at Merritt Hawkins. That's the silliest</p> <p>13:46 7 thing I've ever heard.</p> <p>13:46 8 Q. Why is it your understanding that you can't</p> <p>13:46 9 hook a USB drive up to a computer at Merritt Hawkins?</p> <p>13:46 10 A. Because two years before I left, someone tried</p> <p>13:46 11 to hook up a USB drive and steal MHACS. And they turned</p> <p>13:46 12 off that function.</p> <p>13:46 13 THE REPORTER: Okay. You need to move</p> <p>13:46 14 your hand, please.</p> <p>13:46 15 THE WITNESS: Someone tried to steal</p> <p>13:46 16 MHACS, so they turned off that function.</p> <p>13:46 17 THE REPORTER: Max?</p> <p>13:46 18 THE WITNESS: M-H-A-C-S.</p> <p>13:46 19 A. And they turned off that function.</p> <p>13:46 20 Q. (BY MS. NOWAK) And why would MHA be concerned</p> <p>13:46 21 about people stealing their database or stealing files</p> <p>13:46 22 like this?</p> <p>13:46 23 A. Because their database is proprietary</p> <p>13:46 24 information.</p> <p>13:46 25 Q. Did you ever work with a Dr. Esteban while you</p>	<p>170</p> <p>1 remember.</p> <p>2 Q. Do you recall what you would have named or</p> <p>3 called that file?</p> <p>4 A. No.</p> <p>5 Q. Would it have been account listing?</p> <p>6 A. Maybe.</p> <p>7 Q. Why would you have printed a copy of your</p> <p>8 account listing?</p> <p>9 A. I didn't print a copy of my account listing.</p> <p>10 I don't remember doing that. I don't know why I would</p> <p>11 have unless I printed a lot of stuff. And I don't think</p> <p>12 I printed anything. I didn't walk back into the printer</p> <p>13 room.</p> <p>14 Q. So it's your testimony that you don't think</p> <p>15 that you printed anything on Sunday, September 23rd?</p> <p>16 A. I do not.</p> <p>17 Q. What about the week prior when you were</p> <p>18 interviewing with Consilium, did you print any</p> <p>19 documents --</p> <p>20 A. Oh, I'm sure I --</p> <p>21 Q. -- during that week?</p> <p>22 A. -- printed documents. I was working with</p> <p>23 doctors.</p> <p>24 Q. Okay.</p> <p>25 A. I was doing my job.</p>
<p>171</p> <p>1 were at MHA?</p> <p>2 A. Dr. Esteban. The name is familiar.</p> <p>3 Q. Did you ever maintain a list of your accounts</p> <p>4 at MHA?</p> <p>5 A. Maintain a list, what do you mean?</p> <p>6 Q. Like, did you keep a list of the clients or</p> <p>7 the accounts that you were working on?</p> <p>8 A. I worked with Dr. Esteban at Arthur Marshall,</p> <p>9 not at MHA, I believe.</p> <p>10 Q. Is that your testimony, that you --</p> <p>11 A. I believe so.</p> <p>12 Q. -- worked with --</p> <p>13 A. That's when I remember the name.</p> <p>14 Q. -- Dr. Esteban at Arthur Marshall?</p> <p>15 A. He was a client of mine at Arthur Marshall, I</p> <p>16 believe, unless there's another Dr. Esteban. I worked</p> <p>17 with a lot of doctors.</p> <p>18 Q. So do you know if -- or excuse me -- recall</p> <p>19 whether you maintained a list of accounts or clients</p> <p>20 that you were working with while you were at MHA?</p> <p>21 A. Sure.</p> <p>22 Q. And where did you keep that list?</p> <p>23 A. On the computer. I don't know.</p> <p>24 Q. Did you update it every year?</p> <p>25 A. No, unless they told us we had to. I don't</p>	<p>173</p> <p>1 Q. Would you have taken those -- any of those</p> <p>2 records with you?</p> <p>3 A. No.</p> <p>4 Q. Okay. What would have been the purpose of</p> <p>5 printing a copy of your account listing during that</p> <p>6 week?</p> <p>7 A. If I had to turn it in to my boss.</p> <p>8 Q. Okay. So how often did you have to turn in</p> <p>9 your account listing to your boss?</p> <p>10 A. Okay. Now I know what we're talking about.</p> <p>11 Account listing, yeah. We had a meeting every Friday</p> <p>12 where we went over our accounts and we had to print our</p> <p>13 account listing for that.</p> <p>14 Q. Okay.</p> <p>15 A. I had to -- my mind had to be jogged.</p> <p>16 MS. NOWAK: You were giving me a look. I</p> <p>17 didn't know if you were trying to say you thought it was</p> <p>18 time to take a break or something.</p> <p>19 MR. VOLNEY: No. I don't care.</p> <p>20 Q. (BY MS. NOWAK) What about a file named war,</p> <p>21 w-a-r. Would you have had an Excel spreadsheet named</p> <p>22 war?</p> <p>23 A. Not that I know of. What's on it?</p> <p>24 Q. I don't know. But you liked it a lot.</p> <p>25 A. I have no idea.</p>



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13:49	1 MR. VOLNEY: Just for the record, you're	1	<b>A. Okay. No. 1?</b>
13:50	2 referring to some internal documents from	2	Q. Let's actually start with No. 2.
13:50	3 Merritt Hawkins that have not been turned over in the	3	So it says, Plaintiff's claims are barred in
13:50	4 case.	4	whole or in part because plaintiff waived its claims
13:50	5 Q. (BY MS. NOWAK) Mr. Gresham, you have some	5	and/or is estopped from asserting those claims.
13:50	6 affirmative defenses that you've asserted in this case;	6	And I want to start with the first part where
13:50	7 is that correct?	7	you have made the allegation that plaintiff has waived
13:50	8 <b>A. Some what?</b>	8	its claims. And I'd like to know what's the factual
13:50	9 Q. Affirmative defenses.	9	basis for your assertion that MHA has waived its claims?
13:50	10 Do you know what an affirmative defense is?	10	MR. VOLNEY: Objection; form.
13:50	11 <b>A. Meaning you can't put a USB drive in the</b>	11	<b>A. I don't -- don't know the answer to that. I</b>
13:50	12 <b>computer. Or at least you can put one in, but -- is</b>	12	<b>don't...</b>
13:50	13 <b>that what you're talking an about?</b>	13	Q. (BY MS. NOWAK) Okay. Well, let's look at the
13:50	14 Q. No. I'm talking more in the -- in the	14	second part of that. It says plaintiff is estopped from
13:50	15 litigation, we filed a lawsuit and asserted certain	15	asserting its claims.
13:50	16 claims against you. We said these are the things that	16	What is the factual basis for your allegation
13:50	17 you have done. And in response, you and your lawyer	17	that MHA is estopped from asserting these claims?
13:50	18 would have talked and you would have asserted what's	18	MR. VOLNEY: Objection; form.
13:50	19 called affirmative defenses. So they're your defenses	19	<b>A. Oh, this is -- yeah. It's not saying -- I'm</b>
13:50	20 to why your claims that Merritt Hawkins has asserted	20	<b>not saying both things. I'm saying and/or. Tricky.</b>
13:50	21 are, in your opinion, incorrect or improper.	21	Q. (BY MS. NOWAK) So I'm just trying to -- to
13:50	22 <b>A. Okay.</b>	22	understand.
13:50	23 Q. Okay. Are you familiar with the affirmative	23	Do you have any factual basis for your
13:50	24 defenses that your lawyers have asserted on your behalf?	24	assertion that plaintiff has either waived its claims or
13:50	25 <b>A. Sure.</b>	25	is estopped from asserting its claims?
	175		177
13:50	1 Q. Okay. So one of the affirmative defenses that	1	MR. VOLNEY: Objection; form.
13:50	2 your lawyers have asserted is that MHA has waived its	2	Q. (BY MS. NOWAK) I'm just trying to get at the
13:50	3 claims.	3	facts. What are the facts that underlie this
13:50	4 Do you know what the factual basis for that	4	allegation?
13:50	5 defense is?	5	MR. VOLNEY: Objection; form.
13:50	6 <b>A. No.</b>	6	Q. (BY MS. NOWAK) Are you aware of any?
13:50	7 Q. Okay. So you -- you, as we sit here today,	7	MR. VOLNEY: Objection; form.
13:50	8 are not aware of any factual basis that supports the	8	<b>A. I don't -- I mean, I don't even know what</b>
13:50	9 allegation that MHA has waived its claims?	9	<b>we're talking about here, honestly. The claim that I</b>
13:50	10 <b>A. We may have had that discussion. I don't</b>	10	<b>inserted a USB drive and downloaded information, that's</b>
13:50	11 <b>recall at this time. I mean, you're just throwing out</b>	11	<b>probably what that's about. And yeah, it's common</b>
13:50	12 <b>something that I don't even see in front of me.</b>	12	<b>knowledge. I mean, there are people that can tell you</b>
13:50	13 Q. I can give you --	13	<b>that set that up that it can't be done.</b>
13:50	14 <b>A. Yeah, that would be great.</b>	14	Q. (BY MS. NOWAK) So you think that this
13:50	15 Q. -- a copy of your answer if you'd like.	15	Subparagraph 2, the factual allegation that underlies it
13:50	16 <b>A. That would be great.</b>	16	is solely related to the USB?
13:50	17 MS. NOWAK: Here, Lezley.	17	MR. VOLNEY: Hold on, hold on.
13:50	18 THE REPORTER: Okay.	18	You're just harassing him. He's not a
13:50	19 MS. NOWAK: Thank you, ma'am.	19	lawyer. This is a legal document created by --
13:50	20 THE REPORTER: Uh-huh. 25.	20	MS. NOWAK: I'm not --
13:50	21 (Exhibit No. 25 marked.)	21	MR. VOLNEY: -- his lawyers.
13:50	22 <b>A. And where was that, do you know?</b>	22	MS. NOWAK: -- asking for any legal --
13:50	23 Q. (BY MS. NOWAK) I do. If you'll give me just	23	MR. VOLNEY: If you want to ask in an
13:50	24 a second.	24	interrogatory, I'll give you all those facts. All
13:50	25 So if you'd turn to Page 9.	25	right?

13:53 1 assertion that the restrictions are unreasonable. And  
13:53 2 if you want, we can break it down.

13:53 3 Q. (BY MS. NOWAK) What -- what is -- what are  
13:53 4 the facts that assert, you know, your allegation that  
13:53 5 the restriction as to time is unreasonable? I thought  
13:53 6 we had agreed earlier today that you thought 12 months  
13:53 7 was reasonable.

13:53 8 A. Well, I mean, it's fine.

13:53 9 Q. Okay. And what about the geographic area,  
13:53 10 what's the factual --

13:53 11 A. Unreasonable.

13:53 12 Q. -- basis --

13:53 13 A. We -- I went all over that. That's...

13:53 14 Q. So I can refer to your earlier testimony?

13:53 15 A. Yes, you can refer to my earlier testimony.

13:53 16 Q. Okay. And what about the scope of activity,  
13:53 17 what's the factual basis for your allegation that that  
13:53 18 restriction is unreasonable?

13:53 19 A. Temporary and permanent are not competitive  
13:53 20 with one another at all. They're two completely  
13:53 21 different types of business.

13:53 22 MS. NOWAK: We've been going about an  
13:53 23 hour. Why don't we take a break.

13:54 24 THE WITNESS: Let's just get done. Let's  
13:54 25 go.

1 **A. Uh-huh.**  
2 Q. -- is that correct?  
3 **A. Yes.**  
4 Q. Is it your testimony that you also had  
5 personal items in there?  
6 **A. I'm sure I did.**  
7 Q. Why is it that you -- let me rephrase that.  
8 You didn't delete just your personal items,  
9 though; is that correct?  
10 **A. Yes.**  
11 Q. So on that Sunday, September 23rd, you deleted  
12 both your personal items and items that belonged to MHA?  
13 **A. Yes.**  
14 Q. Do you have those requests for admission there  
15 in front of you? It's the very thick document.  
16 **A. I have it somewhere here.**  
17 Q. And I'll be honest, I don't recall what number  
18 it was.  
19 **A. Okay. Here it is.**  
20 Q. Okay. Can you turn with me to Page 34 and  
21 Request for Admission No. 47 (sic).  
22 **A. No. 147?**  
23 Q. Yes.  
24 **A. Okay.**  
25 Q. Okay. And the question there was, Admit that

14:18 1 MS. NOWAK: Okay.

14:18 2 MR. VOLNEY: Because I think I just

14:18 3 identified the ones in the middle and I didn't, for

14:18 4 whatever reason -- there's so many of them.

14:18 5 MS. NOWAK: Identify that one?

14:18 6 MR. VOLNEY: Right. But I mean, I'm not

14:18 7 trying to hide anything. That should --

14:18 8 MS. NOWAK: I just wanted to clarify.

14:18 9 MR. VOLNEY: That should have been

14:18 10 supplemented. I'm sorry. I apologize. That's on me,

14:18 11 not him.

14:18 12 MS. NOWAK: So John, can we reach an

14:18 13 agreement that you will supplement --

14:18 14 MR. VOLNEY: Right.

14:18 15 MS. NOWAK: -- response for Request for

14:18 16 Admission No. 147?

14:18 17 MR. VOLNEY: Right.

14:18 18 MS. NOWAK: Okay. Thank you.

14:18 19 And at this time, I'm going to reserve my

14:18 20 remaining time with the witness and my right to recall

14:18 21 him. I think it's abundantly clear that there hasn't

14:18 22 been a full production made in this case and that there

14:18 23 are documents outstanding that should be made available

14:18 24 to me.

14:18 25 So at this time, I have no further

1. **A. Twice.**  
2. Q. Okay. And what led to your leaving  
3. Merritt Hawkins the first time?  
4. **A. The only reason I left was 2008, the economy**  
5. **got pretty bad and our accounts dwindled. A recruiter**  
6. **needs 10 to 12 accounts to do well. I think I was down**  
7. **to two. So I went to a company that had more accounts.**  
8. Q. Okay. Now, what was the name of the company  
9. that you went to?  
10. **A. Arthur Marshall.**  
11. Q. What business was Arthur Marshall in?  
12. **A. Permanent position recruiting.**  
13. Q. Was it a direct -- in your view, a direct  
14. competitor of Merritt Hawkins?  
15. **A. Absolutely.**  
16. Q. Now, when -- when you were with  
17. Merritt Hawkins the first time around, did you have an  
18. employment agreement similar to the employment agreement  
19. that Ms. Nowak showed you today?  
20. **A. I think it was the same one.**  
21. Q. Was it just a different date?  
22. **A. Just a different date.**  
23. Q. It had similar noncompetition and  
24. confidentiality provisions?  
25. **A. Yes.**

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<p>14:29 1</p> <p>14:29 2</p> <p>14:29 3</p> <p>14:29 4</p> <p>14:29 5</p> <p>14:29 6</p> <p>14:29 7</p> <p>14:29 8</p> <p>14:29 9</p> <p>14:29 10</p> <p>14:29 11</p> <p>14:29 12</p> <p>14:29 13</p> <p>14:29 14</p> <p>14:29 15</p> <p>14:29 16</p> <p>14:29 17</p> <p>14:29 18</p> <p>14:29 19</p> <p>14:29 20</p> <p>14:29 21</p> <p>14:29 22</p> <p>14:29 23</p> <p>14:29 24</p> <p>14:29 25</p>	<p style="text-align: right;">186</p> <p>Q. Now, how long were you at Arthur Marshall?</p> <p>A. Almost one year exactly.</p> <p>Q. Did -- did Merritt Hawkins at that time do anything to enforce its contractual rights against you while you were at Arthur Marshall?</p> <p>A. They did. They sued Arthur Marshall and I was named in the suit.</p> <p>Q. And so they also sued you?</p> <p>A. I think -- I think so, yeah. I think it was both of us.</p> <p>Q. Were they making -- leaving aside the claims that are related to the deletion of materials that was on your desktop, were they making the same sorts of claims that they're making in this lawsuit against you?</p> <p>A. Exactly.</p> <p>Q. Claims about their alleged confidential information and nonsolicitation on competition provisions?</p> <p>A. Yes.</p> <p>Q. Now, what was the ultimate resolution of that earlier lawsuit?</p> <p>A. I believe it was settled. I could not work in the same states that I worked in at Merritt Hawkins while I was employed at Arthur Marshall at least for one year, I believe, for one year.</p>	<p style="text-align: right;">188</p> <p>come back and I met with Tom Florence.</p> <p>THE REPORTER: Who?</p> <p>THE WITNESS: Tim Beidle.</p> <p>THE REPORTER: No. Tom.</p> <p>THE WITNESS: Florence, F-l-o-r-e-n-c-e.</p> <p>THE REPORTER: Thank you. I just didn't hear you.</p> <p>MR. VOLNEY: Thank you.</p> <p>Q. (BY MR. VOLNEY) So did you then interview again with Mr. Beidle?</p> <p>A. I didn't really interview -- I mean, yeah, I guess -- I guess you would call it an interview.</p> <p>Q. Did you meet with him in person?</p> <p>A. I met with Tom and Tim in person.</p> <p>Q. Now, when you were with Arthur Marshall, did you have an employment agreement with them?</p> <p>A. I did -- I don't recall having an agreement like this (indicating). I think it was an offer letter and then an application, more like what I think I had at Consilium.</p> <p>Q. Now, ultimately you made the decision to leave Arthur Marshall and go back to Merritt Hawkins?</p> <p>A. Yes.</p> <p>Q. And at the time you signed your second employment agreement with Merritt Hawkins, your prior</p>
<p>14:29 1</p> <p>14:29 2</p> <p>14:29 3</p> <p>14:29 4</p> <p>14:29 5</p> <p>14:29 6</p> <p>14:29 7</p> <p>14:29 8</p> <p>14:29 9</p> <p>14:29 10</p> <p>14:29 11</p> <p>14:29 12</p> <p>14:29 13</p> <p>14:29 14</p> <p>14:29 15</p> <p>14:29 16</p> <p>14:29 17</p> <p>14:29 18</p> <p>14:29 19</p> <p>14:29 20</p> <p>14:29 21</p> <p>14:29 22</p> <p>14:29 23</p> <p>14:29 24</p> <p>14:29 25</p>	<p style="text-align: right;">187</p> <p>Q. So tell us, when you were at Merritt Hawkins the first time around, what states did you work in?</p> <p>A. I worked in the Heartland.</p> <p>Q. Okay. And so when you went to Arthur Marshall, what -- what states did you work in?</p> <p>A. I don't remember exactly the states. I worked mostly on the eastern coast. One of my big states was Kentucky. I didn't work any of the Heartland states like Missouri.</p> <p>Q. And -- and I think you've told us the resolution of the Merritt Hawkins case against you and Arthur Marshall was that you would not work in the Heartland while at Arthur Marshall?</p> <p>A. Yes.</p> <p>Q. Were you required to move outside of Dallas County to continue to work at Arthur Marshall?</p> <p>A. I was not.</p> <p>Q. Now, I understand even though they sued you, you ended up going back to work for Merritt Hawkins?</p> <p>A. I did.</p> <p>Q. Tell us how that took place.</p> <p>A. Billy Bowden called me one day to see what I was doing and he said, hey, you want to come back? And I was like, what? No, I'm not -- I can't go back. And then Tim Beidle called me on the phone and asked me to</p>	<p style="text-align: right;">189</p> <p>lawsuit filed against you by Merritt Hawkins had been resolved, correct?</p> <p>A. Yes, correct.</p> <p>Q. And at the time that you signed your second employment agreement, Merritt Hawkins had already sued you once for breach of your employment agreement?</p> <p>A. Yes.</p> <p>Q. But despite that prior lawsuit between you and Merritt Hawkins, Merritt Hawkins asked you to come back?</p> <p>A. And they gave me a promotion.</p> <p>Q. And they gave you a promotion. What were you promoted to?</p> <p>A. Well, I was -- it was an under the table promotion because some of my friends were still at Merritt Hawkins from before. So I started off -- when I came back, I was a search consultant with the understanding that in three months, I would be given senior search consultant. That was my idea because I didn't want to come right back in -- having left as a search consultant and come right back in as a senior search consultant. I was -- I already had the promotion financially. When I came back, they paid me as a senior search consultant.</p> <p>Q. So did they pay you more when you came back?</p> <p>A. They paid me more.</p>

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	194	196
14:29	1 <b>Colorado, Missouri, Arkansas. I think that's -- I think</b>	1 Denton, Ellis, Hunt, Johnson, Kaufman, Rockwall, and
14:29	2 <b>that's it.</b>	2 Tarrant. Then while you were at Merritt Hawkins, none
14:29	3 Q. And so we talked about the geographic area.	3 of your business was in those counties?
14:29	4 But when we talk about your clients while you were at	4 <b>A. No, none of it was.</b>
14:29	5 Merritt Hawkins, we're talking about hospitals and	5 Q. All right. And -- all right.
14:29	6 healthcare facilities in those states that you've just	6 Now, one of the documents in front of you is
14:29	7 listed for us?	7 the set of documents marked Gresham 20. Could you
14:30	8 <b>A. Absolutely. And Oklahoma. I'm sorry. And</b>	8 locate that for me.
14:30	9 <b>Oklahoma.</b>	9 <b>A. Sure.</b>
14:30	10 Q. Now, contrast that for me with the geographic	10 Q. And tell me what the exhibit number is.
14:30	11 area that you worked in when you were at Consilium.	11 <b>A. Okay.</b>
14:30	12 <b>A. I worked with Texas and the East Coast.</b>	12 <b>Okay. Exhibit No. 20.</b>
14:30	13 Q. And what kind of -- who -- who -- who is it in	13 Q. Okay. Good. That's a coincidence there.
14:30	14 the healthcare industry that you were dealing with while	14 Now, my understanding from your prior
14:30	15 you were at Consilium?	15 testimony is that these are some Merritt Hawkins-related
14:30	16 <b>A. Physicians.</b>	16 documents that were located on your -- sort of the hard
14:30	17 Q. So contrast -- contrast that for me with who	17 drives that -- that were imaged by your counsel back
14:30	18 you were -- what types of entities you were dealing with	18 when you were sued in 2012?
14:30	19 while you were at Merritt Hawkins.	19 <b>A. Yes.</b>
14:30	20 <b>A. Clients and physicians; hospitals, clinics,</b>	20 Q. And did you use any of these documents while
14:30	21 <b>and physicians.</b>	21 you were at Consilium?
14:30	22 Q. Right. Okay.	22 <b>A. No.</b>
14:30	23 <b>A. But the geographical area you're talking</b>	23 Q. Did you contact any of the people identified
14:30	24 <b>about, that was hospitals and clinics.</b>	24 on these documents while you were at Consilium?
14:30	25 Q. When you were at Consilium, did you ever make	25 <b>A. No.</b>
	195	197
14:30	1 contact with anybody you dealt with while you were at --	1 Q. Did you even know you had these documents in
14:30	2 and anybody, I mean any clients or physicians you dealt	2 your possession while you were at Consilium?
14:30	3 with while you were at Merritt Hawkins?	3 <b>A. No.</b>
14:30	4 <b>A. No.</b>	4 Q. Do you use these types of offer letters
14:30	5 Q. And how is it that you came up with the	5 identified as Exhibit 20, Pages Gresham 20 through 22?
14:30	6 potential business contacts while you were Consilium?	6 Do you use these types of offer letters at Consilium?
14:30	7 <b>A. Call lists.</b>	7 <b>A. No.</b>
14:30	8 Q. Are there published call lists that tell you	8 Q. Now, what about the community worksheet that
14:30	9 who -- who are the healthcare providers in various	9 is Gresham 37, is this something that you would use --
14:30	10 locations?	10 that you did use while you were at Consilium?
14:30	11 <b>A. There's companies that make call lists. Yeah,</b>	11 <b>A. No.</b>
14:30	12 <b>they're published.</b>	12 Q. Does Consilium use these types of forms?
14:30	13 Q. Okay. Did you also use the internet?	13 <b>A. No.</b>
14:30	14 <b>A. Uh-huh, yes.</b>	14 Q. Do you know why you had the Client
14:30	15 Q. You can -- tell me how that would work.	15 Authorization for Personal Letter Campaign Internet
14:30	16 <b>A. I would just go on certain websites and do a</b>	16 Advertisement that's labeled Gresham 48 in your
14:30	17 <b>search for doctors. I mean, we even used the Yellow</b>	17 possession?
14:30	18 <b>Pages. We used everything.</b>	18 <b>A. Sure. It's the same reason I had the</b>
14:30	19 Q. Now, when you were at Merritt Hawkins, did you	19 <b>community worksheet in our possession. Often when we</b>
14:30	20 deal with any clients who were in Texas?	20 <b>would fly get on a Monday morning, it may be we have to</b>
14:30	21 <b>A. I did not.</b>	21 <b>get up at 4:00 o'clock in the morning to fly. We</b>
14:30	22 Q. Did you deal with any clients in -- then I	22 <b>couldn't go by the office that early to get anything</b>
14:30	23 guess it would be fair to say if we look at the list of	23 <b>because we probably wouldn't make it to the airport. So</b>
14:30	24 Texas counties that's in your employment agreement with	24 <b>we would have them on our own computers, print them off,</b>
14:30	25 Merritt Hawkins, we'll see Dallas County, Collin County,	25 <b>get on the airplane.</b>

Larry Scott Gresham

<p>14:32 1</p> <p>14:32 2</p> <p>14:32 3</p> <p>14:32 4</p> <p>14:32 5</p> <p>14:32 6</p> <p>14:32 7</p> <p>14:32 8</p> <p>14:32 9</p> <p>14:32 10</p> <p>14:32 11</p> <p>14:32 12</p> <p>14:32 13</p> <p>14:32 14</p> <p>14:32 15</p> <p>14:32 16</p> <p>14:32 17</p> <p>14:32 18</p> <p>14:32 19</p> <p>14:32 20</p> <p>14:32 21</p> <p>14:32 22</p> <p>14:32 23</p> <p>14:32 24</p> <p>14:32 25</p>	<p style="text-align: right;">198</p> <p>Q. Was it common practice while you were at Merritt Hawkins for employees to e-mail themselves company-related documents?</p> <p><b>A. Absolutely. We were told to by our supervisors.</b></p> <p>Q. And tell me who your supervisor was.</p> <p><b>A. Tim Beidle, and before that, Robert Colmery.</b></p> <p>Q. Okay. And they understood that you might -- in your recollection, they understood that you would be e-mailing yourself your Merritt Hawkins-related documents?</p> <p><b>A. Sure. They wanted us to work from home.</b></p> <p>Q. Did you use this client authorization or the information that's on this client authorization while you were at Consilium?</p> <p><b>A. No.</b></p> <p>Q. Does Consilium do personal letter campaigns?</p> <p><b>A. No.</b></p> <p>Q. Do they do internet advertisements?</p> <p><b>A. No.</b></p> <p>Q. My understanding of -- of Merritt Hawkins' business is that in some respects, it's a glorified mail house?</p> <p><b>A. Yes.</b></p> <p>Q. Is that what Consilium does?</p>	<p style="text-align: right;">200</p> <p>Q. Does it include any USB drive that you had?</p> <p><b>A. Yeah. If I had one, it included it.</b></p> <p>Q. Do you know if there was a forensic image made of your cell phone?</p> <p><b>A. I don't know. I know the passwords were given to my cell phone so that they could -- the passwords, so they could get into my cell phone.</b></p> <p>Q. Now, did you also give access to your counsel to your e-mail accounts?</p> <p><b>A. I did.</b></p> <p>Q. And that also -- that would then include your scott.gresham@verizon.net account?</p> <p><b>A. Yes.</b></p> <p>Q. Now, you understand that in the course of the lawsuit, Merritt Hawkins has served some discovery requests on you --</p> <p><b>A. Yes.</b></p> <p>Q. -- where they asked you to go out and look for documents?</p> <p><b>A. Yes.</b></p> <p>Q. What did you do to try to find paper documents?</p> <p><b>A. I looked through my house. I had my wife help me look through the house. There was nothing.</b></p> <p>Q. And with respect to the electronic documents?</p>
<p>14:32 1</p> <p>14:32 2</p> <p>14:32 3</p> <p>14:32 4</p> <p>14:32 5</p> <p>14:32 6</p> <p>14:32 7</p> <p>14:32 8</p> <p>14:32 9</p> <p>14:32 10</p> <p>14:32 11</p> <p>14:32 12</p> <p>14:32 13</p> <p>14:32 14</p> <p>14:32 15</p> <p>14:32 16</p> <p>14:32 17</p> <p>14:32 18</p> <p>14:32 19</p> <p>14:32 20</p> <p>14:32 21</p> <p>14:32 22</p> <p>14:32 23</p> <p>14:32 24</p> <p>14:32 25</p>	<p style="text-align: right;">199</p> <p><b>A. Not at all.</b></p> <p>Q. Okay. Now, last document -- or last part of this exhibit is the resume of Donald Turner, PA.</p> <p><b>A. Yes.</b></p> <p>Q. You see that?</p> <p><b>A. Yes.</b></p> <p>Q. Why would you have this in your possession?</p> <p><b>A. When I was on one of these trips, the doctor gave it to me. And I don't honestly remember why it was there. I mean, I obviously was talking to that guy at night or something probably.</b></p> <p>Q. So just to understand in terms of your -- your efforts to -- to locate Merritt Hawkins-related documents once you were sued, tell the Court and the jury what you did.</p> <p><b>A. I just went -- once I was sued, I looked at my -- well, when I was sued, I gave it to counsel, the computer. That day, the day that I was sued, a forensics expert came to my house and took everything.</b></p> <p>Q. And when you say everything, was it all electronic media that was in your possession on the date that you were sued?</p> <p><b>A. Yes.</b></p> <p>Q. That includes your hard drives?</p> <p><b>A. Yes.</b></p>	<p style="text-align: right;">201</p> <p><b>A. I figured it was handled because I gave the computer to the forensics expert.</b></p> <p>Q. All right. Now, thank you. Let's see.</p> <p>Do you -- I want to ask you a few more questions about Merritt Hawkins.</p> <p>During your -- your last weeks of work at Merritt Hawkins -- I'm talking the week that began September 17th or -- well, let's focus on September 17th, 2012 for the minute -- for the moment.</p> <p>What prompted you to contact Billy Bowden on September 17th, 2012?</p> <p><b>A. I was just tired of working there. Honestly, I mean, there's lot of things. It's not that Merritt Hawkins is a bad company or AMN is a bad company. It takes a lot of your time to do permanent physician placement. Locums position placement is not the same kind of job. Permanent position placement is 24 hours a day and you always start from ground zero every month. Locums position staffing is more like annuities and it builds and builds and builds and it's also an 8:00 to 5:00 job. So I had had that feeling for a long time.</b></p> <p>Q. Well, I mean, when you texted Billy on September 17th of 2012, had you already decided you were going to go into another medical staffing job?</p> <p><b>A. I -- I had known for months that I was</b></p>

Larry Scott Gresham

	202	204
14:38	1 probably going to leave. I didn't know what I was going	1 Q. Was there any policy and procedure in place at
14:38	2 to do.	2 Merritt Hawkins, to your knowledge, that prohibited you
14:38	3 Q. All right. Did -- during that week of	3 from cleaning up your terminal --
14:38	4 September 17th, did Billy encourage you to leave	4 A. No.
14:38	5 Merritt Hawkins?	5 Q. -- before you leave?
14:38	6 A. I think he told me the opposite. I think he	6 A. No.
14:38	7 told me, man, stay where you are, you know, it's -- it's	7 Q. Do you know if you cleaned up your terminal
14:38	8 good. I don't really remember, though. But he never	8 before you quit the first time?
14:38	9 encouraged me, you know, I mean, besides, hey, I'd love	9 A. I'm sure I did.
14:38	10 you here, we're friends.	10 Q. Did they say anything to you at that time?
14:38	11 Q. During your last week of work at	11 A. No.
14:38	12 Merritt Hawkins, did you continue to do your job at	12 Q. They certainly didn't sue you for cleaning up
14:38	13 Merritt Hawkins?	13 the terminal?
14:38	14 A. Of course.	14 A. No.
14:38	15 Q. And would that include printing out documents	15 Q. Do you know if they sued anybody else for
14:38	16 as part of that job?	16 cleaning up their terminal before leaving?
14:38	17 A. Absolutely.	17 A. I do not.
14:38	18 Q. And when Ms. Nowak asked about an account	18 Q. Is there -- how would you characterize the
14:38	19 list, is that part of your normal practice, to print	19 rate of turnover of employees at Merritt Hawkins?
14:38	20 that account list and give it to Mr. Beidle?	20 A. It's pretty high. It's high.
14:38	21 A. It is. We had to do it every week.	21 Q. Now, you entered the Merritt Hawkins RIT
14:38	22 Q. Okay. Do you know what Merritt Hawkins keeps	22 program in what year?
14:39	23 track of in terms of your use of its printers?	23 A. 2008.
14:39	24 A. No.	24 Q. How many employees entered that program with
14:39	25 Q. Do you know if they keep track of when you	25 you in 2008?
	203	205
14:39	1 enter and exit the building?	1 A. My class -- I think -- I think my class had 40
14:39	2 A. I -- I assume they do.	2 RITs in it.
14:39	3 Q. Do you know whether they keep track of when	3 Q. How many of those RITs were left a year later?
14:39	4 you log in to their VPN?	4 A. When I left after one year, there were only
14:39	5 A. Sure.	5 two of us left.
14:39	6 Q. And do you know whether they keep track of	6 Q. So two out of 40?
14:39	7 when you log in to your work terminal?	7 A. Uh-huh.
14:39	8 A. Sure.	8 Q. So at least 38 of those other folks had quit?
14:39	9 Q. And we spent a lot of time talking about	9 A. Yes.
14:39	10 the -- the -- what you did when you went to the office	10 Q. All right.
14:39	11 on September 23rd, 2012.	11 MR. VOLNEY: Those are all the questions
14:39	12 Was it -- the documents that you dragged to	12 I have for now. I'll save the rest for later. Thank
14:39	13 your recycle bin that were Merritt Hawkins-related, were	13 you.
14:39	14 those documents already available to Merritt Hawkins on	14 MS. NOWAK: No. I have questions. But
14:39	15 its own servers, in your understanding?	15 thank you.
14:39	16 A. Yes.	16 EXAMINATION
14:39	17 Q. And tell me why you know that.	17 BY MS. NOWAK:
14:39	18 A. Well, all the documents that she listed are --	18 Q. Mr. Gresham, we were talking about your first
14:39	19 they're template documents. They're all on -- they're	19 versus second employment with MHA.
14:39	20 all on the M or -- I think M drive -- anyway, the server	20 And is it your testimony here today that when
14:39	21 drive. The only documents that I was worried about were	21 you left MHA the first time to go to Arthur Marshall,
14:40	22 I had documents that had my credit card information on	22 they took immediate steps to enforce the employment
14:40	23 them and things like that. I knew that that stuff --	23 agreement they had with you?
14:40	24 that's why I just swathed and deleted it. It was my --	24 A. I don't know. We were -- I don't remember how
14:40	25 I was just cleaning up the terminal.	25 long after that I -- that I became employed by



53 (Pages 206 to 209)

54 (Pages 210 to 213)

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	214		216
14:47	1 server?	1	remainder of that text -- text message existed. Billy
14:47	2 <b>A. Peace of mind.</b>	2	said he didn't have it. So I asked him. And when I got
14:47	3 <b>I mean, you're, like, going around in circles</b>	3	it, I provided it to you.
14:47	4 <b>about nothing.</b>	4	MS. NOWAK: I'm just trying to clarify
14:47	5 Q. But you're not denying that the documents that	5	because the witness has said that he thinks that he gave
14:47	6 you dragged into the recycle bin contained information	6	you back in January 21 -- January of 2013 his -- his
14:48	7 about MHA's clients?	7	cell phone and access to all of those text messages.
14:48	8 <b>A. I've never denied it, no.</b>	8	I'm just trying to ascertain did you have access to
14:48	9 Q. And that there were documents that you created	9	those in January 2013.
14:48	10 during the course of your employment?	10	MR. VOLNEY: I'm telling you what
14:48	11 <b>A. I have -- I've never denied it.</b>	11	happened. I don't know what we had access to or not. I
14:48	12 Q. And for your employment?	12	certainly didn't have it. I didn't know if -- well,
14:48	13 <b>A. Never denied it.</b>	13	I'll have to go back and look. I don't know.
14:48	14 Q. And you are aware that MHA has alleged in this	14	MS. NOWAK: All right. Well, with that,
14:48	15 lawsuit that it was not able to recover the files that	15	I think that we're off the record having -- me having
14:48	16 you deleted?	16	reserved my time and my rights.
14:48	17 <b>A. I was aware they alleged it, but...</b>	17	THE VIDEOGRAPHER: We're off the record
14:48	18 MS. NOWAK: Give me a five-minute break	18	at 2:55 p.m.
14:48	19 and then we can wrap up again.	19	(Deposition adjourned at 2:55 p.m.)
14:48	20 MR. VOLNEY: Okay.	20	
14:48	21 THE VIDEOGRAPHER: We're off the record	21	
14:48	22 at 2:48.	22	
14:53	23 (Break taken from 2:48 to 2:53 p.m.)	23	
14:53	24 THE VIDEOGRAPHER: We're on the record at	24	
14:53	25 2:53 p.m.	25	
	215		217
14:53	1 MS. NOWAK: Can I go now?	1	DEPOSITION CHANGES
14:53	2 THE REPORTER: Yes, ma'am.	2	WITNESS: LARRY SCOTT GRESHAM
14:53	3 MS. NOWAK: I didn't jump too fast?	3	PAGE NO. LINE NO. CHANGE REASON FOR CHANGE
14:53	4 THE REPORTER: No.	4	_____
14:53	5 MS. NOWAK: I'm going to once again	5	_____
14:53	6 reserve my right and time to recall this witness given	6	_____
14:53	7 that I don't think that there's been a full production	7	_____
14:54	8 in this case.	8	_____
14:54	9 And John, before we conclude, I do want	9	_____
14:54	10 to ask you, there's been a representation made that the	10	_____
14:54	11 witness may have or did provide Lynn Tillotson with his	11	_____
14:54	12 cell phone and access to all of the text messages back	12	_____
14:54	13 in January 1 of 2013. So I'd like to know, have you had	13	_____
14:54	14 access to the text message that was produced to me	14	_____
14:54	15 yesterday since January 1 of 2013?	15	_____
14:54	16 MR. VOLNEY: Well, first of all, I'm not	16	_____
14:54	17 testifying here today. But I --	17	_____
14:54	18 MS. NOWAK: I'm just inquiring as to --	18	_____
14:54	19 MR. VOLNEY: When I found about it	19	_____
14:54	20 yesterday, which I found out yesterday morning at 9: --	20	_____
14:54	21 THE WITNESS: 9:30.	21	_____
14:54	22 MR. VOLNEY: -- 30, I immediately had him	22	_____
14:54	23 e-mail it to me and then I produced it to you. That's	23	_____
14:54	24 my first knowledge of it. And I remember that you had	24	_____
14:54	25 asked during Mr. Bowden's deposition whether the	25	_____



55 (Pages 214 to 217)

Larry Scott Gresham

218

1 \_\_\_\_\_  
 2 (Signature of the witness)  
 3  
 4 THE STATE OF \_\_\_\_\_  
 5 COUNTY OF \_\_\_\_\_  
 6  
 7 Subscribed and sworn to before me by the said  
 8 witness, LARRY SCOTT GRESHAM, on this the \_\_\_\_\_ day  
 9 of \_\_\_\_\_, 2014.  
 10  
 11  
 12 \_\_\_\_\_  
 13 Notary Public in and for the  
 14 State of \_\_\_\_\_  
 15 County of \_\_\_\_\_  
 16 My commission expires: \_\_\_\_\_  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

219

1 STATE OF TEXAS )  
 2 COUNTY OF DALLAS )  
 3  
 4 I, Lezley Cull, Certified Shorthand Reporter  
 5 in and for the State of Texas, certify that the  
 6 foregoing deposition of LARRY SCOTT GRESHAM was reported  
 7 stenographically by me at the time and place indicated,  
 8 said witness having been placed under oath by me, and  
 9 that the deposition is a true record of the testimony  
 10 given by the witness.  
 11 I further certify that I am neither counsel  
 12 for nor related to any party in this cause and am not  
 13 financially interested in its outcome.  
 14 Given under my hand on this the \_\_\_\_\_ day  
 15 of \_\_\_\_\_, 2014.  
 16  
 17    
 18 Lezley Cull, Texas CSR 5528  
 19 Expiration Date: 12/31/15  
 20 DepoTexas, Firm Registration #459  
 21 Sunbelt Reporting, Firm Registration #301  
 22 6500 Greenville Avenue  
 23 Suite 445  
 24 Dallas, Texas 75206  
 25 214-373-4977  
 Original deposition sent to Mr. John Volney on \_\_\_\_\_  
 for signature.

56 (Pages 218 to 219)

Wendy Cassidy

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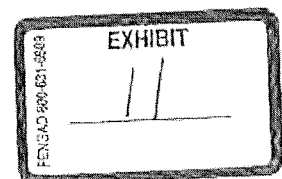
From: Scott Gresham <scott.gresham@verizon.net>  
Sent: Wednesday, September 19, 2012 7:57 PM  
To: Christina Stephens  
Subject: Thank you

Christina,

Thank you for taking the time today to talk to me about Consilium Staffing as a whole, as well as the recruiter opening. I remain extremely excited about the position, and I look forward to our future meetings. Additionally, thank you for adjusting your schedule to accommodate such an early meeting on Friday morning. Have a great evening, and I will see you on Friday at 7:00 AM.

Thanks,

Scott Gresham



GRESHAM 000001

**From:** Scott Gresham  
**Sent:** Monday, September 24, 2012 7:00 AM  
**To:** Tim Bekdie  
**Subject:** Resignation

Dear Tim,

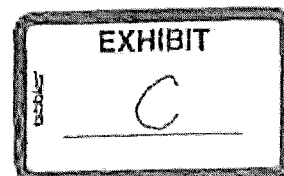
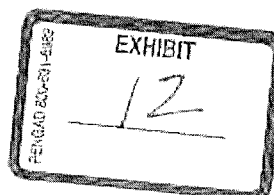
Please accept this notification that I am leaving my position at Merritt Hawkins effective September 24. I appreciate the opportunities I have been given at Merritt Hawkins and your professional guidance and support. I wish you and Merritt Hawkins continued success in the future.

For the past few months, my heart and mind have not been focused solely on physician recruiting, and I have received an offer that I cannot refuse that will be a new and exciting endeavour for me. Again, I appreciate the support everyone at Merritt Hawkins has given me, and I wish the Heartland continued success.

Respectfully,

Scott Gresham

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**Wendy Cassidy**

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**From:** Scott Gresham <scott.gresham@verizon.net>  
**Sent:** Thursday, October 04, 2012 10:59 AM  
**To:** Christina Stephens  
**Subject:** RE: Good morning

That sounds great!

Thanks,

Scott Gresham

---

**From:** Christina Stephens [<mailto:cstephens@consiliumstaffing.com>]  
**Sent:** Thursday, October 04, 2012 10:55 AM  
**To:** Scott Gresham  
**Subject:** RE: Good morning

Hey Scott,

Everything went very well on our end and I expect to be able to get back with you later today with more details! Thank you! Christina

---

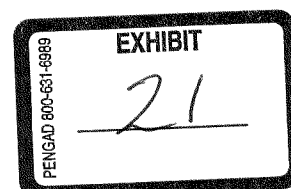
**From:** Scott Gresham [<mailto:scott.gresham@verizon.net>]  
**Sent:** Thursday, October 04, 2012 10:53 AM  
**To:** Christina Stephens  
**Subject:** Good morning

Good morning Christina,

I am just checking in to get an update on the status of everything. I had a great time meeting with Joe and Matt on Tuesday and Kyle, John, and Amy yesterday. I look forward to hearing from you, and have a great day!

Thanks,

Scott Gresham



**Wendy Cassidy**

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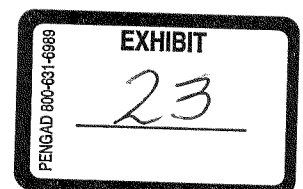
**From:** Scott Gresham <scott.gresham@verizon.net>  
**Sent:** Thursday, October 04, 2012 5:15 PM  
**To:** Christina Stephens  
**Subject:** Offer and Background Authorization  
**Attachments:** background.pdf; offer.pdf

Christina,

I have attached the offer and background check authorization to this email. I look forward to working with you guys as well. I think you have a great thing going on, and I am excited to be a part of it!

Thanks,

**Scott Gresham**





**CONSILIUM STAFFING, LLC**  
**CONSUMER AUTHORIZATION & RELEASE**

In connection with Consilium Staffing, LLC considering me for employment, continued employment, promotion or reassignment, I authorize Consilium Staffing, LLC and/or its agent, SelectForce, Inc., to obtain a consumer report which may include information on my character, general reputation, personal characteristics, and mode of living from public record sources or through personal interviews with previous employers or associates. Public record check may include but not limited to a criminal or felony background check, sex offender's registry check, education verification and social and past address trace. I understand that a consumer reporting agency investigation may include obtaining a motor vehicle license and that we will conform to the Driver Privacy Protection Act. The applicant is required for the motor vehicle to provide a consent form and a photo I.D. before obtaining the record. Our company will retain the consent form and the results for a period of 5 years.

I authorize, without reservation, any person or entity contacted by Consilium Staffing, LLC, or its agent, SelectForce, Inc. to furnish the above-stated information and I release any such person or entity from any and all liability for furnishing such information. I further release Consilium Staffing, LLC and its affiliated companies, their officers, employees and agents, and specifically, **SelectForce, Inc.**, their affiliated companies, their officers, employees and agents from any liability and responsibility arising from the preparation of said report. I understand that false or misleading statements made on this authorization, or made during the employment process, will disqualify me from consideration for employment or result in my immediate discharge if employed.

By my execution hereof I acknowledge I have been provided with a Consumer Disclosure advising me that a credit report will be requested and used for the purpose of evaluating me for employment, continued employment, promotion or reassignment as an employee.

**PLEASE PRINT**

NAME: LARRY SCOTT GRESHAM  
First Middle Last Maiden  
 DOB\* [REDACTED] SSN# [REDACTED] DR. LIC. # [REDACTED] STATE ISSUED: TX  
 ADDRESS: [REDACTED]  
 CITY: [REDACTED] STATE: [REDACTED] ZIP: 1 [REDACTED] How Long? 2 years  
 PREVIOUS ADDRESS: [REDACTED]  
 CITY: [REDACTED] STATE: [REDACTED] ZIP: [REDACTED] How Long? 2 years  
 SIGNATURE: [Signature] DATE: \_\_\_\_\_

\*"Date of Birth" (DOB) will be used solely for the purpose of identification in doing background checks and will not be considered in the "employment" process.

**CONSUMER DISCLOSURE**

In connection with Consilium Staffing, LLC considering you for employment, continued employment, promotion or reassignment, Consilium Staffing, LLC and/or SelectForce, Inc. may obtain a consumer report on you which may include information on character, general reputation, personal characteristics, and mode of living from public record sources or personal interviews with previous employers or associates.

You have the right, upon written request, to receive a written description of the nature and scope of the investigation requested and a written summary of your rights under the Fair Credit Reporting Act.

**I HEREBY ACKNOWLEDGE RECEIPT:**

LARRY S Gresham  
Print Name  
[Signature]  
Signature

10/4/2012  
Date

GRESHAM 000011



CONSILIUM STAFFING  
YOUR PARTNER IN LOCUM TENENS

5215 N. O'CONNOR BLVD. SUITE 325  
IRVING, TX 75039

October 4th, 2012

Dear Scott Gresham,

On behalf of the entire Consilium Staffing team, I am pleased to extend to you an offer of employment as a Senior Recruiting Consultant. The annual base pay for this position is \$45,000 to be paid bi-weekly. Consilium Staffing, LLC also agrees to pay you a guarantee against commissions in the amount of \$1000 per month for a period of 2 months beginning November 2012. Commissions (if applicable) will be paid on the last day of the following month. We anticipate the first day of your employment to begin on Monday October 15th, 2012.

Consilium Staffing, LLC provides medical and dental benefits including employer paid premiums (subject to employee paid deductibles). Consilium Staffing, LLC employees receive Paid Time Off, plus eight Company paid holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after (Friday), and Christmas Day.

If you accept this employment offer and become a member of the Consilium Staffing team, you will become eligible for health benefits on the first day of the month following 30 days of employment. This offer is contingent upon proof of identification, work authorization and successful completion of reference and background check.

This letter is not a contract of employment. Consilium Staffing LLC reserves the right to change the terms and conditions of employment at any time, without notice. Employment with Consilium Staffing, LLC is employment "at-will." Either you or the Company may choose to terminate the employment relationship at any time.

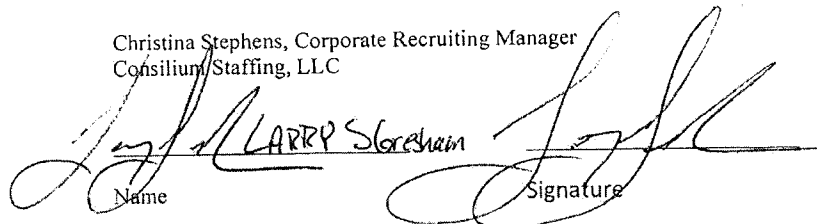
By accepting this offer of employment, you represent to Consilium Staffing, LLC that you do not possess any confidential or proprietary information belonging to any of your prior employers, and that you do not need any such information to perform the duties for which you are being hired by Consilium Staffing, LLC. You further represent to Consilium Staffing, LLC that you are under no contractual or other restriction or obligation that will in any way limit your ability to provide services to Consilium Staffing, LLC or to engage in activities on behalf of Consilium Staffing. To the extent you have not already done so, all confidential or proprietary information belonging to any of your prior employers that may have ever been in your possession should be returned to such employer prior to the commencement of your employment with Consilium Staffing, LLC.

Your skills and knowledge will contribute significantly to our overall growth plans. We are also excited that our organization will provide you with career development opportunities and challenges.

To indicate acceptance of this offer, please sign this letter in the space provided below and return it to me as soon as possible. We look forward to having you join Consilium Staffing, LLC.

Sincerely,

Christina Stephens, Corporate Recruiting Manager  
Consilium Staffing, LLC

  
Name Signature

10/4/2012

Date

GRESHAM 000012

APP. 0176

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT dated this April 28, 2008, ("Agreement") is entered into by and between Merritt, Hawkins & Associates, a Texas corporation ("MHA"), and Billy Bowden ("Employee").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

### ARTICLE I EMPLOYMENT

MHA hereby agrees to employ the Employee and the Employee hereby accepts such employment and agrees to perform the services specified herein upon the terms and conditions set forth in this Agreement.

### ARTICLE II DUTIES

The Employee shall be employed as a[n] Search Consultant of MHA, effective April 28, 2008. The Employee understands and agrees that his/her primary responsibilities will encompass part or all of the following: recruitment of medical specialists, selling of services to clients, and account management of new and current business either on the permanent or contract side of the business. The Employee agrees to perform the duties normally incidental to that position for as long as he or she shall hold that office and to perform such other duties and responsibilities as may be prescribed from time to time by the Board of Directors of MHA (the "Board"). The Employee also agrees to perform, without additional compensation, such services for corporations or other enterprises affiliated with MHA as the Board may from time to time specify.

### ARTICLE III EXTENT OF SERVICE

a: The Employee shall devote such time, attention and energy to the business of MHA and corporations affiliated with MHA as the Board shall require, and shall not during the term of this Agreement be engaged in any other personal activity if such activity requires the personal services of Employee and is pursued for gain, profit or other pecuniary advantage.

b: The foregoing shall not be construed as preventing the Employee (1) from making investments in businesses of enterprises provided such investments do not require any personal services on the part of the Employee in the operation or the affairs of such businesses or enterprises or (2) participating in any charitable or philanthropic activities.



ARTICLE IV  
CONFIDENTIAL INFORMATION

a: The Employee will be trained, by MHA, in the capacity of a[n] Search Consultant or and will have access to and develop confidential information relating to the exact names and contacts of clients of MHA, the fees charged by MHA, and sales techniques unique to the success of MHA.

b: In addition, the Employee further acknowledges that the Confidential Information received through training and employment by MHA will enable the Employee to cultivate the loyalty and good will of MHA clients or customers and will enable the Employee to develop close, personal relationships with MHA clients. The Employee agrees that Confidential Information documented in MHA files, records and documents is the property of MHA and agrees that the Employee shall not, without the prior written consent of MHA, disclose or make available to any person, or use directly or indirectly, any of such Confidential Information, except in connection with the performance of the Employee's employment by MHA.

c: This obligation shall not apply to such portion of MHA or its client's information which the Employee can establish: (a) was previously known to the Employee prior to the Employee obtaining the same from MHA or its client or developing the same for MHA's or its client; (b) was in the public domain prior to the time of disclosure by MHA or its client to Employee or prior to the time such information was developed by Employee for MHA or its client; or (c) was later disclosed to Employee by a third party who did not receive the same, directly or indirectly, from MHA or its client or who had no obligation of secrecy with respect thereto. The Employee further recognizes the need of MHA to protect these legitimate business interests by a covenant not to compete as provided under Article VII.

d: The Employee acknowledges and agrees that this non-disclosure obligation shall survive any termination of this Agreement and shall be fully enforceable by MHA or its successor or assignee subsequent to the termination of the Employee's employment, regardless of the reason for such termination.

e: For purposes of the Agreement, the term "Confidential Information" shall be defined as information in the possession of, prepared by, obtained by, or compiled by MHA which is not generally available to the public. "Confidential Information" shall include, but is not limited to, information pertaining to: (i) the identity of MHA customers, clients and prospects; (ii) the business, finances and special needs of MHA, its customers, clients, contacts and prospects; (iii) MHA policies and procedures; (iv) MHA compensation plans and employee benefits; (v) confidential market studies; (vi) pricing studies, information and analyses; (vii) current and prospective business projections; (viii) business plans and strategies; (ix) financial statements and information; (x) special processes, procedures and services of MHA; (xi) methods of bidding, bids to customers, clients and prospects and profit margins; and (xii) unique software programs and databases developed by MHA including, but not limited to, all computer disks, slides, files, manuals or other information pertaining to such software programs and

databases. The Employee acknowledges and agrees that this information, if disclosed, could place MHA at a competitive advantage.

#### ARTICLE V AUTHORSHIP

a: Moreover, if during Employee's employment by MHA, Employee creates any original work of authorship fixed in any tangible medium of expression which is the subject matter of copyright (such as videotapes, written presentations on acquisitions, computer programs, models, manuals, brochures or the like) relating to MHA's business products, or services, whether such work is created solely by Employee or jointly with others, MHA shall be deemed the author of such work if the work is prepared by Employee in the scope of Employee's employment; or, if the work is not prepared by the Employee within the scope of Employee's employment but is specialty ordered by MHA as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation or as an instructional text, then the work shall be considered to be work made for hire and MHA shall be the author of the work.

b: In the event such work is neither prepared by the Employee within the scope of Employee's employment or is not a work specially ordered and deemed to be a work made for hire, then the Employee hereby agrees to assign, and by these presents, does assign, to MHA all of Employee's worldwide right, title and interest in and to such work and all rights of copyright therein.

c: Both during the period of Employee's employment by MHA and thereafter, Employee agrees to assist MHA and its nominee, at any time, in the protection of MHA worldwide right, title and interest in and to the work and all rights of copyright therein, including but not limited to, the execution of all formal assignment documents requested by MHA or its nominee and the execution of all lawful oaths and publications for registration of copyright in the United States and foreign countries.

#### ARTICLE VI TERMINATION OF EMPLOYMENT

In the event that this Agreement is terminated for any reason, the Employee agrees he/she shall, prior to the effective date of termination, return any and all records; files; documents; materials; copies; equipment; literature; data; information; audio or videotapes; slides; computer disks, files or information; software programs; order forms; memoranda; correspondence; customer lists or information; prospect lists or information; financial statements or other information pertaining to MHA its customers clients, contacts or prospects; agreements; contracts; orders; records; policy or procedure manuals; memoranda; and/or any cards or notes acquired, compiled or coming into the Employee's knowledge, possession or control in connection with his/her activities as an employee of MHA, as well as all machines, parts, equipment or other materials received from MHA or from any of its customers, clients, or prospects in connection with such activities.

ARTICLE VII  
NON-COMPETITION

a: The Employee acknowledges and agrees that as an employee and representative of MHA, the Employee will be responsible for building and maintaining business relationships and goodwill with current and future customers, clients and prospects on a personal level. The Employee acknowledges and agrees that this responsibility creates a special relationship of trust and confidence between MHA, the Employee and these persons or entities. The Employee acknowledges and agrees that this special relationship of trust and confidence between MHA, the Employee and current and future customers, clients and prospects creates a high risk and opportunity for the Employee to misappropriate these relationships and goodwill existing between MHA and such persons and entities. The Employee acknowledges and agrees that it is fair and reasonable for MHA to take steps to protect MHA from the risk of such misappropriation.

b: The Employee acknowledges and agrees that he/she has received and will continue to receive substantial, valuable consideration for the agreements set forth in this section including: (i) access to Confidential Information, as defined above; (ii) continued employment; (iii) specialized training and knowledge pertaining to the products, services, business practices, procedures and Confidential Information utilized by MHA; and (iv) compensation and benefits as described herein. The Employee acknowledges and agrees that this constitutes fair and adequate consideration for the agreements set forth in this section.

c: In consideration for the valuable consideration described above, the Employee acknowledges and agrees as follows:

(1) For a period of twelve (12) months following the termination of this Agreement by either party, for whatever reason, the Employee will not solicit, contact, or communicate with any person, company or business that was a client, customer or prospect of MHA, and that the Employee personally solicited, contacted, communicated with or accepted business from while he/she was an employee of MHA at any time during the twelve (12) months preceding the termination of this Agreement, for the purpose of engaging in the Same or a Similar Business as MHA in the Market Area.

(2) For a period of twelve (12) months following the termination of this Agreement by either party, for whatever reason, the Employee will not engage in the Same or a Similar Business as MHA anywhere in the Market Area, including working as an agent, consultant, partner, employee, officer, shareholder or independent contractor, for any company of business engaged in the Same or a Similar Business as MHA anywhere in the Market Area.

(3) The Employee acknowledges and agrees that these non-competition agreements shall survive any termination of the Agreement and shall be fully enforceable by MHA to its successor assignee subsequent to the termination of the Employee's employment. Regardless of the reason for such termination.

(4) In the event that the Employee violates this Section VII, and MHA is required to initiate legal action to secure the Employee's compliance with Section VII, the Employee understands and agrees that, in addition to any other legal or equitable relief to which MHA may be entitled under applicable law, he/she shall be prohibited from violating Section VII of the Agreement for a period of twelve (12) months from the date a final judgment is entered in favor of MHA enforcing Section VII of this Agreement.

d. For purpose of this section, the following definitions shall apply:

(1) The term "Same or a Similar Business as MHA" shall be defined as the business of recruitment of medical specialists, selling of services to clients, and account management of new and current business.

(2) The term "Market Area" shall be defined as any location within fifty (50) miles of the office of MHA to which the Employee is currently assigned. The Employee understands and agrees that MHA shall have the sole discretion to assign the Employee to a different office, or modify the geographic scope of the Employee's sales territory description. In the event that MHA assigns the Employee to a new office, the parties agree that, for the purposes of this section, the "Market Area" shall be modified to include any location within fifty (50) miles of the new office to which the Employee is assigned.

e. The Employee acknowledges and agrees that the Agreements set forth above are ancillary to an otherwise enforceable agreement and supported by independent valuable consideration as required by Tex. Bus. & Comm. Code Ann. ~ 15.50 (or any successor provision). The Employee further acknowledges and agrees that the limitations as to time, geographical area, and scope of, activity to be restrained are reasonable and acceptable to the Employee, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of MHA. The Employee further agrees that if, at some later date, a court of competent jurisdiction determines that these Agreements do not meet criteria set forth in Tex. Bus. & Comm. Code Ann. ~ 15.50 (2) (or any successor provision), these Agreements may be reformed by the court, pursuant to Tex. Bus. & Comm. Code Ann. ~ 15.51 (c) (or any successor provision), and enforces to the maximum extent permitted under Texas law.

#### ARTICLE VIII NON-INTERFERENCE

The Employee agrees that, for a period of thirty-six (36) months subsequent to the termination of this Agreement, whether such termination occurs at the insistence of MHA or the Employee, the Employee shall not solicit or recruit directly or by assisting others, any other employees of MHA, its parent companies, subsidiary companies, affiliated companies, successors or assigns, nor shall the Employee contact or communicate with any other employees of MHA, its parent companies, subsidiary companies, affiliated companies, successors or assigns, for the purpose of inducing other employees to terminate their employment with MHA, its parent companies, subsidiary companies, affiliated companies, successors or assigns. For the purposes of this covenant, "other employees" shall refer to employees who are still actively employed by, or doing business with, MHA, or any of its parent companies, subsidiary companies, affiliated companies, successors or assigns, at the time of the attempted recruiting or hiring. The Employee acknowledges and agrees that these non-interference agreement shall survive any termination of the Agreement and shall be fully enforceable by MHA or its successor or assignee subsequent to the termination of the Employee's employment, regardless of the reason of such termination.

#### ARTICLE IX REMEDIES

a. MHA and Employee, jointly and severally, acknowledge that it would be impossible to calculate or ascertain accurately and definitely the damages MHA would sustain from a breach by Employee of the provisions of this Agreement and that no adequate remedy at law exists. Accordingly, in the event of a breach or threatened breach by the Employee of this Agreement, including without limitation breach of Article VII, MHA shall be entitled to an injunction restraining such prohibited activity.

b. Nothing herein, however shall be construed as prohibiting MHA from pursuing concurrently with the above injunction, such other relief as a result of such breach or threatened breach, including the recovery of damages from the Employee.

c. It is agreed that in the event of a breach of this Agreement by Employee it would be impractical or extremely difficult to fix the actual damages and therefore Employee agrees that upon its breach of this Agreement it will pay to MHA as liquidated damages and not as a penalty the sum equal to the standard fee charges to any client for each physician who accepts employment or associates with any person or entity as a result of a breach of this Agreement.

#### ARTICLE IX MISCELLANEOUS

a. The obligations specified in this Agreement shall survive the termination of the employment relationship and are in addition to the obligations otherwise imposed by the law; the expiration of these specific obligations does not terminate the obligations imposed by law.

b. The parties acknowledge and agree that this Agreement may be assigned by



MHA to any other person or entity without the consent of the Employee. In the event of any such assignment, the duties and obligations of the Employee, and the rights of MHA (including, but not limited to, the Confidential Information, Non-Competition, Authorship and Non-Interference provisions set forth in this Agreement), shall inure to the benefit of, be fully enforceable by, the assignee. The parties further acknowledge and agree that the Employee's duties; obligations, compensation and benefits are personal to the employee and may not be assigned to any person or entity without the written consent of MHA. In the event of the Employee's death, this Agreement shall be enforceable by the Employee's estate, executors or legal representatives, but only to the extent that such persons may collect any compensation due to the Employee under this Agreement.

c. The Employee understand and agrees that, with respect to any compensation or benefits required to be paid under this Agreement, MHA is authorized to withhold any amounts from such compensation required by Federal, state or local law.

d. The parties acknowledge and agree that, in the event that either party initiates litigation to enforce any provision of the Agreement, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party its reasonable costs and expenses, including attorneys' fees, incurred in connection with such litigation.

e. The parties acknowledge and agree that each provision of this Agreement shall be enforceable independently of every other provision. Furthermore, the parties acknowledge and agree that, in the event any provision of this Agreement is determined to be unenforceable for any reason the remaining covenants and/or provisions will remain effective, binding and enforceable. The parties further agree that, in the event that any provision of this Agreement is determined to be unenforceable for any reason, the parties agree to substitute a comparable provision dealing with the same subject matter as the unenforceable provision which approximates the effect and intent of the unenforceable provision to the maximum extent permissible under applicable law.

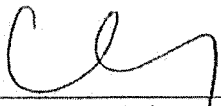
f. The parties acknowledge and agree that the failure of either to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions, of this Agreement

g. The parties acknowledge and agree that this Agreement constitutes the complete and entire agreement between the parties; that the parties have executed this Agreement based upon the express terms and provisions set forth herein; that the parties have not relied on any representations, oral or written, which are not set forth in this Agreement; that all previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. In addition, the parties acknowledge and agree that the provisions of this Agreement may not be modified by any subsequent agreement unless the modifying agreement (i) is in writing; (ii) contains an express provision referencing this Agreement; (iii) is signed by the Employee; and (iv) is signed by the President or CEO or MHA.

h. This Agreement does not alter in any way the fact that Employee's employment relationship with MHA exists only at the will of both MHA and Employee. Either MHA or Employee may terminate the employment relationship at any time for any lawful reason, with or without cause, by the giving of verbal or written notice of termination.

i. This Agreement shall be governed and construed in accordance with the substantive laws of the State of Texas. MHA is based in Irving, Texas, and this Agreement is to be partially performed in Irving, Texas. It is agreed that any and all disputes arising out of this Agreement will be heard and decided in the state or federal courts situated in Dallas County, Texas. Both MHA and Employee hereby appoint the Secretary of State for the State of Texas as its and Employee's agent to receive and accept service of process in connection with any and all such litigation.

Merritt, Hawkins & Associates

By:   
Robert Colmeny  
Divisional Vice President

Date: 4-23-08

EMPLOYEE:   
Billy Bowden

Date: 4/23/08



**EMPLOYMENT AGREEMENT**

**between**

**Merritt, Hawkins & Associates**

**and**

**Larry Gresham**

**Search Consultant**

**March 31, 2008**

MHA000238

**APP. 0185**

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT dated this March 31, 2008, ("Agreement") is entered into by and between Merritt, Hawkins & Associates, a Texas corporation ("MHA"), and Larry Gresham ("Employee").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

### ARTICLE I EMPLOYMENT

hereby agrees to employ the Employee and the Employee hereby accepts such employment and agrees to perform the services specified herein upon the terms and conditions set forth in this Agreement.

### ARTICLE II DUTIES

The Employee shall be employed as a[n] Search Consultant of, effective March 31, 2008. The Employee understands and agrees that his/her primary responsibilities will encompass part or all of the following: recruitment of medical specialists, selling of services to clients, and account management of new and current business either on the permanent or contract side of the business. The Employee agrees to perform the duties normally incidental to that position for as long as he or she shall hold that office and to perform such other duties and responsibilities as may be prescribed from time to time by the Board of Directors of (the "Board"). The Employee also agrees to perform, without additional compensation, such services for corporations or other enterprises affiliated with as the Board may from time to time specify.

### ARTICLE III EXTENT OF SERVICE

a: The Employee shall devote such time, attention and energy to the business of and corporations affiliated with as the Board shall require, and shall not during the term of this Agreement be engaged in any other personal activity if such activity requires the personal services of Employee and is pursued for gain, profit or other pecuniary advantage.

b: The foregoing shall not be construed as preventing the Employee (1) from making investments in businesses of enterprises provided such investments do not require any personal services on the part of the Employee in the operation or the affairs of such businesses or enterprises or (2) participating in any charitable or philanthropic activities.

MHA000239

APP. 0186

ARTICLE IV  
CONFIDENTIAL INFORMATION

a: The Employee will be trained, by , in the capacity of a[n] Search Consultant or and will have access to and develop confidential information relating to the exact names and contacts of clients of , the fees charged by , and sales techniques unique to the success of .

b: In addition, the Employee further acknowledges that the Confidential Information received through training and employment by will enable the Employee to cultivate the loyalty and good will of clients or customers and will enable the Employee to develop close, personal relationships with clients. The Employee agrees that Confidential Information documented in files, records and documents is the property of and agrees that the Employee shall not, without the prior written consent of , disclose or make available to any person, or use directly or indirectly, any of such Confidential Information, except in connection with the performance of the Employee's employment by .

c: This obligation shall not apply to such portion of or its client's information which the Employee can establish: (a) was previously known to the Employee prior to the Employee obtaining the same from or its client or developing the same for 's or its client; (b) was in the public domain prior to the time of disclosure by or its client to Employee or prior to the time such information was developed by Employee for or its client; or (c) was later disclosed to Employee by a third party who did not receive the same, directly or indirectly, from or its client or who had no obligation of secrecy with respect thereto. The Employee further recognizes the need of to protect these legitimate business interests by a covenant not to compete as provided under Article VII.

d: The Employee acknowledges and agrees that this non-disclosure obligation shall survive any termination of this Agreement and shall be fully enforceable by or its successor or assignee subsequent to the termination of the Employee's employment, regardless of the reason for such termination.

e: For purposes of the Agreement, the term "Confidential Information" shall be defined as information in the possession of, prepared by, obtained by, or compiled by which is not generally available to the public. "Confidential Information" shall include, but is not limited to, information pertaining to: (i) the identity of customers, clients and prospects; (ii) the business, finances and special needs of , its customers, clients, contacts and prospects; (iii) policies and procedures; (iv) compensation plans and employee benefits; (v) confidential market studies; (vi) pricing studies, information and analyses; (vii) current and prospective business projections; (viii) business plans and strategies; (ix) financial statements and information; (x) special processes, procedures and services of ; (xi) methods of bidding, bids to customers, clients and prospects and profit margins; and (xii) unique software programs and databases developed by including, but not limited to, all computer disks, slides, files, manuals or other information pertaining to such software programs and databases. The Employee acknowledges and agrees that this information, if disclosed, could place at a competitive advantage.

MHA000240

APP. 0187

## ARTICLE V AUTHORSHIP

a: Moreover, if during Employee's employment by , Employee creates any original work of authorship fixed in any tangible medium of expression which is the subject matter of copyright (such as videotapes, written presentations on acquisitions, computer programs, models, manuals, brochures or the like) relating to 's business products, or services, whether such work is created solely by Employee or jointly with others, shall be deemed the author of such work if the work is prepared by Employee in the scope of Employee's employment; or, if the work is not prepared by the Employee within the scope of Employee's employment but is specialty ordered by as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation or as an instructional text, then the work shall be considered to be work made for hire and shall be the author of the work.

b: In the event such work is neither prepared by the Employee within the scope of Employee's employment or is not a work specially ordered and deemed to be a work made for hire, then the Employee hereby agrees to assign, and by these presents, does assign, to all of Employee's worldwide right, title and interest in and to such work and all rights of copyright therein.

c: Both during the period of Employee's employment by and thereafter, Employee agrees to assist and its nominee, at any time, in the protection of worldwide right, title and interest in and to the work and all rights of copyright therein, including but not limited to, the execution of all formal assignment documents requested by or its nominee and the execution of all lawful oaths and publications for registration of copyright in the United States and foreign countries.

## ARTICLE VI TERMINATION OF EMPLOYMENT

In the event that this Agreement is terminated for any reason, the Employee agrees he/she shall, prior to the effective date of termination, return any and all records; files; documents; materials; copies; equipment; literature; data; information; audio or videotapes; slides; computer disks, files or information; software programs; order forms; memoranda; correspondence; customer lists or information; prospect lists or information; financial statements or other information pertaining to its customers clients, contacts or prospects; agreements; contracts; orders; records; policy or procedure manuals; memoranda; and/or any cards or notes acquired, compiled or coming into the Employee's knowledge, possession or control in connection with his/her activities as an employee of , as well as all machines, parts, equipment or other materials received from or from any of its customers, clients, or prospects in connection with such activities.

## ARTICLE VII NON-COMPETITION

MHA000241

APP. 0188

a: The Employee acknowledges and agrees that as an employee and representative of , the Employee will be responsible for building and maintaining business relationships and goodwill with current and future customers, clients and prospects on a personal level. The Employee acknowledges and agrees that this responsibility creates a special relationship of trust and confidence between , the Employee and these persons or entities. The Employee acknowledges and agrees that this special relationship of trust and confidence between , the Employee and current and future customers, clients and prospects creates a high risk and opportunity for the Employee to misappropriate these relationships and goodwill existing between and such persons and entities. The Employee acknowledges and agrees that it is fair and reasonable for MHA to take steps to protect from the risk of such misappropriation.

b: The Employee acknowledges and agrees that he/she has received and will continue to receive substantial, valuable consideration for the agreements set forth in this section including: (i) access to Confidential Information, as defined above; (ii) continued employment; (iii) specialized training and knowledge pertaining to the products, services, business practices, procedures and Confidential Information utilized by ; and (iv) compensation and benefits as described herein. The Employee acknowledges and agrees that this constitutes fair and adequate consideration for the agreements set forth in this section.

c: In consideration for the valuable consideration described above, the Employee acknowledges and agrees as follows:

(1) For a period of twelve (12) months following the termination of this Agreement by either party, for whatever reason, the Employee will not solicit, contact, or communicate with any person, company or business that was a client, customer or prospect of , and that the Employee personally solicited, contacted, communicated with or accepted business from while he/she was an employee of at any time during the twelve (12) months preceding the termination of this Agreement, for the purpose of engaging in the Same or a Similar Business as MHA in the Market Area.

(2) For a period of twelve (12) months following the termination of this Agreement by either party, for whatever reason, the Employee will not engage in the Same or a Similar Business as anywhere in the Market Area, including working as an agent, consultant, partner, employee, officer, shareholder or independent contractor, for any company of business engaged in the Same or a Similar Business as anywhere in the Market Area.

(3) The Employee acknowledges and agrees that these non-competition agreements shall survive any termination of the Agreement and shall be fully enforceable by MHA to its successor assignee subsequent to the termination of the Employee's employment. Regardless of the reason for such termination.

MHA000242

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(4) In the event that the Employee violates this Section VII, and is required to initiate legal action to secure the Employee's compliance with Section VII, the Employee understands and agrees that, in addition to any other legal or equitable relief to which may be entitled under applicable law, he/she shall be prohibited from violating Section VII of the Agreement for a period of twelve (12) months from the date a final judgment is entered in favor of enforcing Section VII of this Agreement.

d. For purpose of this section, the following definitions shall apply:

(1) The term "Same or a Similar Business as " shall be defined as the business of recruitment of medical specialists, selling of services to clients, and account management of new and current business.

(2) The term "Market Area" shall be defined as any location within fifty (50) miles of the office of to which the Employee is currently assigned. The Employee understands and agrees that shall have the sole discretion to assign the Employee to a different office, or modify the geographic scope of the Employee's sales territory description. In the event that assigns the Employee to a new office, the parties agree that, for the purposes of this section, the "Market Area" shall be modified to include any location within fifty (50) miles of the new office to which the Employee is assigned.

e. The Employee acknowledges and agrees that the Agreements set forth above are ancillary to an otherwise enforceable agreement and supported by independent valuable consideration as required by Tex. Bus. & Comm. Code Ann. ~ 15.50 (or any successor provision). The Employee further acknowledges and agrees that the limitations as to time, geographical area, and scope of, activity to be restrained are reasonable and acceptable to the Employee, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of . The Employee further agrees that if, at some later date, a court of competent jurisdiction determines that these Agreements do not meet criteria set forth in Tex. Bus. & Comm. Code Ann. ~ 15.50 (2) (or any successor provision), these Agreements may be reformed by the court, pursuant to Tex. Bus. & Comm. Code Ann. ~ 15.51 (c) (or any successor provision), and enforces to the maximum extent permitted under Texas law.

#### ARTICLE VIII NON-INTERFERENCE

The Employee agrees that, for a period of thirty-six (36) months subsequent to the termination of this Agreement, whether such termination occurs at the insistence of or the Employee, the Employee shall not solicit or recruit directly or by assisting others, any other employees of , its parent companies, subsidiary companies, affiliated companies, successors or assigns, nor shall the Employee contact or communicate with any other employees of , its parent companies,



subsidiary companies, affiliated companies, successors or assigns, for the purpose of inducing other employees to terminate their employment with , its parent companies, subsidiary companies, affiliated companies, successors or assigns. For the purposes of this covenant, "other employees" shall refer to employees who are still actively employed by, or doing business with, , or any of its parent companies, subsidiary companies, affiliated companies, successors or assigns, at the time of the attempted recruiting or hiring. The Employee acknowledges and agrees that these non-interference agreement shall survive any termination of the Agreement and shall be fully enforceable by or its successor or assignee subsequent to the termination of the Employee's employment, regardless of the reason of such termination.

#### ARTICLE IX REMEDIES

a. and Employee, jointly and severally, acknowledge that it would be impossible to calculate or ascertain accurately and definitely the damages would sustain from a breach by Employee of the provisions of this Agreement and that no adequate remedy at law exists. Accordingly, in the event of a breach or threatened breach by the Employee of this Agreement, including without limitation breach of Article VII, shall be entitled to an injunction restraining such prohibited activity.

b. Nothing herein, however shall be construed as prohibiting from pursuing concurrently with the above injunction, such other relief as a result of such breach or threatened breach, including the recovery of damages from the Employee.

c. It is agreed that in the event of a breach of this Agreement by Employee it would be impractical or extremely difficult to fix the actual damages and therefore Employee agrees that upon its breach of this Agreement it will pay to as liquidated damages and not as a penalty the sum equal to the standard fee charges to any client for each physician who accepts employment or associates with any person or entity as a result of a breach of this Agreement.

#### ARTICLE IX MISCELLANEOUS

a. The obligations specified in this Agreement shall survive the termination of the employment relationship and are in addition to the obligations otherwise imposed by the law; the expiration of these specific obligations does not terminate the obligations imposed by law.

b. The parties acknowledge and agree that this Agreement may be assigned by to any other person or entity without the consent of the Employee. In the event of any such assignment, the duties and obligations of the Employee, and the rights of (including, but not limited to, the Confidential Information, Non-Competition, Authorship and Non-Interference provisions set forth in this Agreement), shall inure to the benefit of, be fully enforceable by, the assignee. The parties further acknowledge and agree that the Employee's duties; obligations, compensation and benefits are personal to the employee and may not be assigned to any person

or entity without the written consent of MHA. In the event of the Employee's death, this Agreement shall be enforceable by the Employee's estate, executors or legal representatives, but only to the extent that such persons may collect any compensation due to the Employee under this Agreement.

c. The Employee understand and agrees that, with respect to any compensation or benefits required to be paid under this Agreement, is authorized to withhold any amounts from such compensation required by Federal, state or local law.

d. The parties acknowledge and agree that, in the event that either party initiates litigation to enforce any provision of the Agreement, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party its reasonable costs and expenses, including attorneys' fees, incurred in connection with such litigation.

e. The parties acknowledge and agree that each provision of this Agreement shall be enforceable independently of every other provision. Furthermore, the parties acknowledge and agree that, in the event any provision of this Agreement is determined to be unenforceable for any reason the remaining covenants and/or provisions will remain effective, binding and enforceable. The parties further agree that, in the event that any provision of this Agreement is determined to be unenforceable for any reason, the parties agree to substitute a comparable provision dealing with the same subject matter as the unenforceable provision which approximates the effect and intent of the unenforceable provision to the maximum extent permissible under applicable law.


f. The parties acknowledge and agree that the failure of either to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions, of this Agreement

g. The parties acknowledge and agree that this Agreement constitutes the complete and entire agreement between the parties; that the parties have executed this Agreement based upon the express terms and provisions set forth herein; that the parties have not relied on any representations, oral or written, which are not set forth in this Agreement; that all previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. In addition, the parties acknowledge and agree that the provisions of this Agreement may not be modified by any subsequent agreement unless the modifying agreement (i) is in writing; (ii) contains an express provision referencing this Agreement; (iii) is signed by the Employee; and (iv) is signed by the President or CEO or .

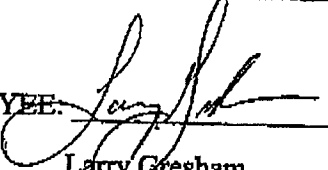
h. This Agreement does not alter in any way the fact that Employee's employment relationship with exists only at the will of both and Employee. Either or Employee may terminate the employment relationship at any time for any lawful reason, with or without cause, by the giving of verbal or written notice of termination.

i. This Agreement shall be governed and construed in accordance with the substantive laws of the State of Texas. is based in Irving, Texas, and this Agreement is to be partially performed in Irving, Texas. It is agreed that any and all disputes arising out of this Agreement will be heard and decided in the state or federal courts situated in Dallas County, Texas. Both and Employee hereby appoint the Secretary of State for the State of Texas as its and Employee's agent to receive and accept service of process in connection with any and all such litigation.

Merritt, Hawkins & Associates

By:   
Robert Colmery  
Divisional Vice President

Date: 3-24-08

EMPLOYEE:   
Larry Gresham

Date: 3-30-08

MHA000246

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**CONFIDENTIALITY, NON-COMPETITION AND NON-SOLICITATION AGREEMENT**

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**THIS CONFIDENTIALITY, NON-COMPETITION AND NON-SOLICITATION AGREEMENT** ("Agreement") is entered into on this 17 day of MAY, 2010, by and between Merritt, Hawkins & Associates. (Merritt Hawkins, its parent, subsidiaries and affiliates shall collectively be referred to herein as the "Company"), and Larry S. Gresham, an individual ("Employee" or "you").

**WITNESSETH:**

**WHEREAS**, Employee is accepting employment with MERRITT HAWKINS as Search Consultant and

**WHEREAS**, the Employee agrees to perform the duties normally incidental to the position for as long as he or she shall hold that office and to perform such other duties and responsibilities as may be prescribed from time to time by the Company. The Employee also agrees to perform, without additional compensation, such services for corporations or other enterprises affiliated with the Company as the Company may from time to time specify; and

**WHEREAS**, Company shall disclose to Employee and Employee shall have access to the Company's Confidential Business Information, as that term is defined below; and

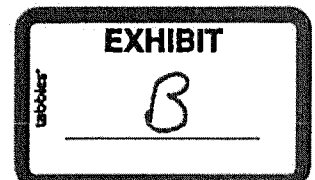
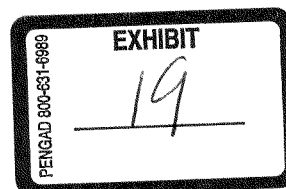
**WHEREAS**, Company will provide you access to valuable, proprietary, confidential, and specialized Company Training, as that term is defined below; and

**WHEREAS**, Company will provide you with access to its actual and prospective customers or candidates for recruiting and other staffing services as well as Company's relationships with its candidates / healthcare professionals, clients, employees and vendors (collectively referred to in this Agreement as "Company Relationships"); and

**WHEREAS**, the nature of the business of Company requires that Employee carry out his/her duties in a confidential manner and the Company desires to protect the Confidential Business Information, Company Training, Company Relationships, and other legitimate business interests of Company; and

**WHEREAS**, Employee agrees and acknowledges that Company would not have agreed to employ, or continue to employ, Employee or disclose and provide access to the Company's Confidential Business Information, absent the covenants and restrictions set forth in this Agreement, especially Employee's covenants in Sections 2 and 5.

**NOW, THEREFORE**, in consideration of the promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of



which is hereby acknowledged, and as a condition to, and in consideration of, the employment of Employee by Company, the parties do hereby agree as follows:

1. Confidential Business Information. Employee understands and acknowledges that, by virtue of Employee's position, Employee will acquire and/or will have access to knowledge of various confidential, trade secret and/or proprietary information of the Company and/or its clients (all of which is hereinafter referred to as "Confidential Business Information"). By way of illustration only, and not limitation, Confidential Business Information includes information regarding: (a) marketing, advertising, public relations and/or promotional strategies, programs, plans and methods; (b) pricing policies, methods and concepts, product and services strategies, training programs, and methods of operation and other business methods; (c) mailing lists and lists of and information relating to current, former and prospective clients and accounts of the Company; (d) lists of and information relating to healthcare professionals, prospective healthcare professionals and other candidates for placement, including positions held, salaries and benefits received and other personal information concerning and/or provided by healthcare professionals, prospective healthcare professionals and other candidates for placement; (e) the personnel needs of current, former and/or prospective clients and accounts of the Company; (f) terms of service contracts between the Company and its clients, accounts, vendors and/or suppliers; (g) business plans, expansion plans, management policies and other business policies and strategies; (h) business and sales forecasts, market analyses, costs, sales and revenue reports, budgets, other financial data which relates to the management and operation of the Company and its products and services, and other analyses not publicly disclosed; (i) the Company's competitors; (j) employment lists, and salary, compensation and other information regarding employees, agents, independent contractors, consultants and representatives of the Company; (k) internally developed computer programs and software and specialized computer programs and source code; (l) internal procedures, programs, reports and forms of the Company; (m) Company Training and Company Relationships; and (n) other confidential, trade secret and/or proprietary information that allows the Company to compete successfully.

2. Confidentiality. Employee covenants and agrees that he/she will not use any of the Confidential Business Information, Company Training or Company Relationships for any purpose other than in the course and scope of his/her employment and for the exclusive benefit of the Company. Except for disclosure in the course and scope of his/her employment with Company and on behalf of the Company, Employee will never at any time, either during or after his/her employment with Company, directly or indirectly, use, publish, disseminate, distribute or otherwise disclose any Confidential Business Information, Company Training or Company Relationships to any other person, firm, corporation, partnership, association or other entity.

Employee also agrees to take all steps necessary, and all steps requested to ensure that the Confidential Business Information, Company Training and Company Relationships are kept secret and confidential and for the sole use and benefit of the Company and to comply with all applicable policies and procedures of the Company regarding the storage and security of all such information, whether in hard copy form or stored on computer disks or other electronic media. Employee also acknowledges that the Confidential Business Information, Company Training and Company Relationships are,

and have been, the subject of efforts that are reasonable under the circumstances to maintain its confidentiality.

Employee acknowledges and agrees that the Confidential Business Information, Company Training and Company Relationships are special and unique assets of the Company. Employee further agrees that the disclosure of any Confidential Business Information, Company Training and Company Relationships of the Company, both during and after his/her employment or use of any Confidential Business Information, Company Training or Company Relationships for Employee's own benefit would constitute a breach of this Agreement.

3. Work Product. Employee acknowledges that all ideas, discoveries, programs, systems, methods, interfaces, protocols, databases, creations, artwork, articles, programming, processes, designs, inventions or improvements relating to technological matters, whether or not capable of being protected by patent, copyright, trade secret or other intellectual property right (the "Work Product"), conceived by the Employee while employed by or consulting with Company, whether formally or informally, compensated or uncompensated, or whether during regular working hours, or while Employee is an officer or director of Company, provided such Work Product is related in some manner to the business (present and/or contemplated) of Company, shall be owned and belong exclusively to Company and that Employee shall have no personal interest in or right to use the Work Product. Employee further acknowledges that all Work Product, conceived by the Employee while employed by or consulting with Company, whether formally or informally, compensated or uncompensated, or while Employee is an officer or director of Company, provided such Work Product was conceived on Company's time and/or with Company's equipment, supplies, facilities, or Confidential Business Information shall be owned and belong exclusively to Company and that Employee shall have no personal interest in or right to use the Work Product, irrespective of whether or not such Work Product is related in some manner to the business (present and/or contemplated) of Company. Employee shall, unless Company otherwise agrees in writing, and without additional compensation: (i) promptly disclose to Company all Work Product, and business opportunities related to the present and/or contemplated business of Company ("Business Opportunities"); (ii) assign to Company and comply with all reasonable instructions of Company regarding assigning, upon request, the entire rights to all Work Product and Business Opportunities; (iii) give an affidavit and live testimony (as may be necessary or desirable in the sole and absolute discretion of Company) in support of his/her inventorship or creation in any appropriate case; and (iv) execute such other documents and take such other action as may be required to protect the rights of Company in any such Work Product and Business Opportunities, including without limitation, such patent, trademark and copyright applications, as may be necessary or desirable in the sole and absolute discretion of Company to obtain, maintain, protect or vest in Company the entire right, title and interest in and to the Work Product and Business Opportunities. Employee agrees that all Work Product, all derivatives thereof, and Employee's contributions thereto shall be considered "works made for hire" as contemplated in the U.S. Copyright Act. If any portion of the Work Product is not ruled to be a "work made for hire," Employee hereby assigns and transfers to Company and its respective successors and assigns, absolutely and forever all right, title and interest in and to such "Work Product," including, without limitation, the right to use same in any and all versions of the Work Product and in any other works in any media published or licensed by Company and the right to recover for

past or future infringements thereof. This provision shall not apply to Work Product for which no equipment, supplies, facility, or Confidential Business Information of Company was used and which was developed entirely on Employee's own time, and (a) which does not relate (1) to the business of Company; or (2) to Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by Employee for Company.

4. Return of Documents. Employee acknowledges that all documents, records and materials that he/she prepares, and Confidential Business Information, Company Training, and Company Relationships that he/she may have access to, may be given or entrusted to him/her, may develop, or he/she may acquire knowledge of in the course of his/her employment are and shall remain the sole property of Company and/or the Company. In the event that Employee's employment terminates for any reason, or upon demand, Employee agrees to immediately return or turn over all Confidential Business Information, Company Training and information about Company Relationships (and any copies thereof regardless of the format) in his/her possession, custody or control, as well as any documents, records, notes, or other work product, materials, information and other property in his/her possession, custody or control which is in any way connected with or derived from his/her services to, or affiliation with, Company.

5. Non-Competition. During Employee's employment, Employee acknowledges and agrees that he/she will receive and will continue to receive substantial, valuable consideration for the agreements set forth in this section including: (i) access to Confidential Business Information, as defined above; (ii) specialized training and knowledge pertaining to the products, services, business practices and procedures and Confidential Business Information utilized by Company (referred to in this Agreement as Company Training); and (iii) access to Company Relationships. Employee acknowledges and agrees that this constitutes fair and adequate consideration for the agreements set forth in this section.

In consideration for the valuable consideration described above and ancillary to Employee's promises and covenants in Sections 2 and 4 above, Employee acknowledges and agrees as follow:

(A) Covenant Not To Compete: During the term of Employee's employment with the Company and for a period of twelve (12) months after the termination of Employee's employment with the Company for any reason, Employee agrees that he/she will not, within the Restricted Territory, perform services of the same, similar, or greater nature to those performed by Employee for the Company, for any person, entity or venture which competes with the business of the Company (which business includes recruiting and providing temporary and permanent healthcare professionals, placements and other staffing services to healthcare professionals, healthcare facilities and other healthcare organizations). For purposes of this covenant, the Restricted Territory is defined as Dallas, Texas, and all counties adjacent to Dallas County, including the counties of Collin, Denton, Ellis, Hunt, Johnson, Kaufman, Rockwall, and Tarrant.

Employee agrees that this covenant not to compete is reasonable and necessary to protect the Company's legitimate business interests, including, without

limitation, the confidential and professional information and trade secrets of the Company (*i.e.* the Company's Confidential Business Information), the substantial relationships between the Company and its customers, clients and candidates for placement (*i.e.* Company Relationships), specialized training and knowledge pertaining to the products, services, business practices and procedures utilized by Company (*i.e.* Company Training), and the goodwill of the Company and is reasonable, necessary, and designed to enforce Employee's promises in Sections 2-4 above. Employee also agrees that the 12-month duration of this covenant not to compete is reasonable. Additionally, Employee acknowledges and agrees that the geographical limitation of this covenant not to compete also is reasonable and that the enforcement of this covenant not to compete, whether by injunctive relief, damages, if possible, or otherwise, is in no way contrary to the public health, safety and welfare.

(B) Non-Solicitation of Clients. During Employee's employment with the Company and for a period of twelve (12) months following the termination of Employee's employment with the Company for any reason, Employee agrees not to, either individually or jointly, directly or indirectly, either as an employee, employer, operator, agent, independent contractor, owner, consultant, partner, investor or otherwise, call upon, solicit or provide any products or services that compete with the products and services offered by the Company to any actual or prospective client, customer or candidate for placement / healthcare professionals of the Company and who was serviced, directly or indirectly, by Employee or with whom Employee otherwise dealt, directly or indirectly, including management or supervision of others who serviced or dealt with such client, customer or candidate, during the 12-month period prior to his/her separation from the Company.

Employee agrees that this covenant not to solicit clients, customers, or candidates is reasonable and necessary to protect the Company's legitimate business interests, including, without limitation, the confidential business or professional information and trade secrets of the Company (*i.e.* the Company's Confidential Business Information), and the substantial relationships between the Company and its customers, clients and candidates for placement (*i.e.* Company Relationships), specialized training and knowledge pertaining to the products, services, business practices and procedures utilized by Company (*i.e.* Company Training), and the goodwill of the Company and is reasonable, necessary, and designed to enforce Employee's promises in Sections 2-4 above. Employee also agrees that the 12-month duration of this covenant not to solicit clients, customers, or candidates is reasonable and that the enforcement of this covenant, whether by injunctive relief, damages, if possible, or otherwise, is in no way contrary to the public health, safety and welfare.

(C) Non-Solicitation of Personnel. Employee agrees that during his/her employment with the Company and for a period of thirty-six (36) months after the termination of Employee's employment with the Company for any reason, Employee will not, himself/herself or through any individual or entity, (i) solicit, induce or attempt to induce away from employment or association with the Company any then-current officer, director, employee, independent contractor, consultant, agent, or other personnel or representative of the Company or any such



individual who has provided services to the company within the preceding six month period, (ii) otherwise intentionally disrupt, impair, damage or interfere with any relationship between the Company and any of its then-current officers, directors, employees, independent contractors, consultants, agents, or other personnel or representatives or any such individual who has provided services to the company within the preceding six month period.

Employee agrees that this covenant not to solicit personnel is reasonable and necessary to protect the Company's legitimate business interests, including, without limitation, the confidential business or professional information and trade secrets of the Company (*i.e.* Confidential Business Information), the substantial relationships between the Company and its officers, directors, employees, independent contractors, consultants, agents, and other personnel and representatives and is reasonable, necessary, and designed to enforce Employee's promises in Sections 2-4 above. Employee also agrees that the thirty-six (36) month duration of this covenant is reasonable and that the enforcement of this covenant, whether by injunctive relief, damages, or otherwise, is in no way contrary to the public health, safety and welfare.

6. Specific Performance; Injunction. Employee understands that if he/she violates any of the terms of this Agreement, Employee will be subject to disciplinary action up to and including termination of employment. Employee further agrees and acknowledges that the covenants and undertakings contained in this Agreement relate to matters that are of a special, unique and extraordinary character and that a violation or breach by Employee of any of the covenants and undertakings contained in this Agreement will cause irreparable harm or damage to the Company, the monetary amount of which would be difficult, if not impossible, to ascertain and which cannot be adequately compensated. As a result, Employee agrees that, in addition to any other available remedies, the Company shall have the right to seek and obtain specific performance, an injunction, restraining order or other equitable relief from a court of competent jurisdiction to enforce this Agreement in the event of an actual, potential or threatened violation or breach of any provision of this Agreement. Without regard to whether the Company seeks or is granted any such equitable relief, the Company will not be prejudiced in its right to seek and be awarded damages for the violation or breach of any provision of this Agreement. Employee understands that the rights and remedies provided for in this Agreement are cumulative and will be in addition to any rights and remedies otherwise available to the Company under applicable law. Employee also agrees that the existence of any claim or cause of action that he/she may have against the Company, whether predicated on this Agreement or otherwise, shall not constitute a valid defense to the enforcement of the covenants and undertakings contained in this Agreement.

Employee further agrees and acknowledges that should legal proceedings be initiated by Company to enforce the restrictive covenants contained in Section 5 of this Agreement, the commencement of the applicable time period of said restrictive covenants will commence on the date of the entry of an order granting Company injunctive, monetary or other relief from Employee's actual, potential or threatened violation or breach of said restrictive covenants and will remain in effect for the original time period of the restrictive covenant. Employee acknowledges and agrees that the purpose and effect of the restrictive covenants contained in Section 5 of this Agreement would be frustrated by measuring the

applicable time period of said restrictive covenants from the termination of Employee's employment where Employee fails to honor the restrictive covenants contained in Sections 5 of this Agreement until directed to do so by court order.

7. Maximum Restrictions of Time, Scope and Geographical Area. Although the restrictions in this Agreement regarding competition, solicitation and breach of confidentiality are considered by the parties to be reasonable for the purposes of protecting the value intended to be received by Company from this Agreement with Employee, if any such restriction is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time, or over too broad a range of activities, or in too large a geographic area, or otherwise, then such restriction shall be interpreted only to extend over the maximum period of time, range of activities, geographic area, or other terms, as to which it may be enforceable. The parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or geographic area, to delete specific words or phrases, and replace any invalid or unenforceable term or provision with an enforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

8. Notices. Employee agrees and acknowledges that during his/her employment and for a period of twelve (12) months following the termination of Employee's employment for any reason, Employee will inform each prospective new employer he/she may have, prior to accepting employment, of the existence of this Agreement, and he/she shall provide each prospective employer with a copy of this Agreement. Employee also agrees and acknowledges that the Company has the right to independently contact any potential or actual future employer of Employee to notify the future employer of Employee's obligations under this Agreement and provide such future employer with a copy of this Agreement. The Company shall also be entitled to notify such actual or potential future employer of the Company's understanding of the requirements of this Agreement and what steps, if any, the Company intends to take to insure compliance with or enforcement of this Agreement.

9. Prior Disclosure. Employee represents and warrants that he/she has not used or disclosed any confidential information, trade secret, copyright or any other intellectual property he/she may have obtained from Employer prior to signing this Agreement, in any way inconsistent with the provisions of this Agreement.

10. Confidential Information of Prior Employers. Employee will not disclose or use during the period of his/her employment with the Company, any proprietary or confidential information, trade secret, copyright or any other intellectual property belonging to a previous employer or other third party which Employee may have acquired because of employment with an employer other than the Company or acquired from any other third party, whether such information is in Employee's memory or embodied in a writing or other physical form.

11. Agreement Not to Be Construed as Creating a Contract of Employment. Employee understands and acknowledges that Employee's execution of this Agreement will in no way be construed as creating a contract of employment between the Company and Employee and that Employee's employment status remains "at will" and Employee's

employment may be terminated by Employee or the Company, at any time, with or without notice and with or without cause.

12. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

13. Disparagement. During Employee's employment with the Company and after termination of such employment, Employee agrees to refrain from engaging in a any conduct or pattern of conduct that involves the making or publishing, in all forms of communications, including but not limited to e-mails, chat rooms, instant messaging and all other forms of electronic communication, of any written or oral statements or remarks (including the repetition or distribution of derogatory rumors, allegations, negative reports, or comments), which are disparaging, deleterious, or damaging to the integrity, reputation, or goodwill of the Company, its employees, and its affiliates.

14. Complete Agreement. This Agreement constitutes the entire agreement among the parties and supersedes all other prior agreements and understandings, both written and oral, with respect to the subject matter hereof.

15. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

16. Successors and Assigns; Assignment. Employee expressly consents that Company may assign the rights and benefits given to it in this Agreement, and this Agreement shall survive any sale of assets, merger, consolidation, or other change in corporate structure.

17. Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Texas. The parties hereto agree that all actions and proceedings relating hereto shall be litigated in Dallas County, Texas, unless the claim is mandated by law to be filed elsewhere.

18. Litigation. The parties acknowledge and agree that, in the event that either party initiates litigation to enforce any provision of the Agreement, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party its reasonable costs and expenses, including attorney's fees, incurred in connection with such litigation.

19. Amendment and Waiver. This Agreement may not be changed or amended except in writing signed by the parties. The waiver by any party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of such provision or the breach of any other provision contained in this Agreement.

20. Headings. The headings contained in this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and in no way define, limit or describe the intent of this Agreement or any provisions hereof.

21. Construction. This Agreement shall not be construed against any party by reason of the fact that the party may be responsible for the drafting of this Agreement or any provision hereof.

22. Knowledge of Rights and Duties. Employee has carefully reviewed and completely read all of the provisions of this Agreement and understands and has been advised that he/she may consult with counsel of his/her choice for any explanation of his/her rights, duties, obligations and responsibilities under this Agreement, should Employee so desire. Employee acknowledges that he/she enters into this Agreement of his/her own free will.

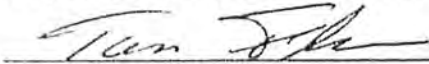
*[Signature page follows]*



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of  
the date and year first above written.


COMPANY:

MERRITT, HAWKINS & ASSOCIATES

By:  5-10-10

Its: \_\_\_\_\_

EMPLOYEE:

  
(Signature)

Larry Scott Gresham  
(Print Name)

[SIGNATURE PAGE TO CONFIDENTIALITY, NON-COMPETITION AND  
NON-SOLICITATION AGREEMENT]

 Back (30)

Billy

Contact

Text Message  
Sep 17, 2012, 12:06 PM

Hey are you still at delta?

Sep 17, 2012, 1:52 PM

Did you get in touch with  
your corporate recruiter?

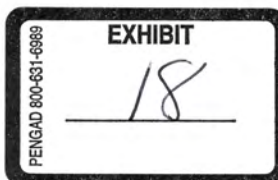
Hey buddy I'll have  
Christina Stephens give  
you a call today.

Consilium staffing

Ok excellent

Deleon McKee interviewed  
last week

How did that go?



Text Message

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[← Back \(30\)](#)**Billy**[Contact](#)

I always liked him but not sure that I trusted him.

Joe Hawkins knows him...  
Not sure what Deleon wanted.... We were interviewing him for a position but I think he wanted more of a partnership with Joe

I felt the same way about him

Ah

Sep 17, 2012, 5:30 PM

She called you?

Ya went really well. I'm coming up on wed at lunch



Text Message

Send

●●●○○ Sprint 3G

11:41 AM



Back (30)

**Billy**

Contact

---

Sep 17, 2012, 8:23 PM

Awesome man!

Sep 18, 2012, 7:15 AM

Ya I'm excited to meet with her; how long does the whole process take there?

Sep 19, 2012, 1:07 PM

Let me know what she thought if you hear

She thought you were awesome.... Wants to move forward ASAP...

When you leave mha I need you to do one thing.

What?9



Text Message

Send



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11:41 AM



Back (30)

Billy

Contact

What?9

Slap Beidle in the back of  
the head.

Haha

Sep 19, 2012, 4:14 PM

Hey call me tonight if you  
have the chance

Sure.. What time works  
best?

Sep 19, 2012, 5:34 PM

Any..I get off @ 7

Sep 20, 2012, 9:43 AM

You call?



Text Message

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11:41 AM



< Back (30)

Billy

Contact

Butt dial lol

Hahaha... You little butt pirate!

I am what I am and I be what I be. I gotta be me!

Ha... Remember that time we airport education Maria Perez together? That was fun.

Haha yeah. I was shocked when we saw her

She's still there too

I know I called up there trying to sell some locums coverage. Christopher  
rural health



Text Message

Send

[◀ Back \(30\)](#)**Billy**[Contact](#)

I know I called up there  
trying to sell some locums  
coverage. Christopher  
rural health.

Haha. They hate Mha  
now

They hate all companies...  
Won't use outside firms

At Fletcher they worked  
with Mary Francis  
Dumass... So funny to hear  
the report complain about  
her.

I know her

I remember... In El dorado



Text Message

Send



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11:41 AM



Back (30)

**Billy**

Contact

Yes...Brian still works with them

Sep 20, 2012, 4:41 PM

This is killing me lol...I just want to walk out

Hahaha

Sep 21, 2012, 7:58 AM

Finished in 23 minutes lol

Ha I'm downstairs in the lounge having bible study... Come by and I'll introduce you to the guys

Oh man, I left at like 730

Oh... Ok



Text Message

Send

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11:42 AM



Back (30)

Billy

Contact

We were here since 7

Aww man

Let me know if she says  
anything else to you

I'd be interested in doing a  
bible study with you guys  
too

It's awesome man... Had a  
great study

She loves you and you did  
well on your test.

Sep 21, 2012, 9:44 AM

Awesome

Sep 23, 2012, 2:28 PM



Text Message

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11:42 AM



Back (30)

Billy

Contact

You're right line is garbage

Sick

I guess free thought since  
written was on the guy  
he'd just stand there

What the heck

Lol

When did he become  
butterfingers

I thought he was knocked  
out

Hate that oline



Text Message

Send



●●●○○ Sprint 3G

11:42 AM



< Back (30)

Billy

Contact

Ya, free is garbage

Murray is so talented, and we can't even use him because our line can't even run block

But thankfully the tb offense is horrific

Odd strategy by tb.

Ya

I thought they were giving up

Whew

Sep 24, 2012, 9:12 AM

You doina the dirty deed



Text Message

Send

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11:42 AM



< Back (30)

Billy

Contact

Odd strategy by tb.

Ya

I thought they were giving up

Whew

Sep 24, 2012, 9:12 AM

You doing the dirty deed yet?

Did it haha, was brutal

Call me [972 272 6913](tel:9722726913)...  
When you can

Sep 25, 2012, 10:38 AM

Have time to grab some Ali



Text Message

Send



●●●○○ Sprint 3G

11:42 AM



[← Back \(30\)](#)

**Billy**

[Contact](#)

Have time to grab some Ali baba for lunch?

Sure man, where is that?

Ah, on MacArthur, what time?

SECOND corner of 114 and MacArthur... We went with stephan... Buffet style

Ok cool, noon?

I meant southeast corner... Not second... 1140?

Kk sounds good

Noon will work... If you can get there a little before it's



Text Message

Send

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11:42 AM



< Back (30)

Billy

Contact

Noon will work... If you can  
get there a little before it's  
good because it gets  
packed right at noon.

Ok I can get there at 1140  
no

Np I mean

Then let's do it 1140

Kk

Kkk

Ok I'm here, I'm out front

Sep 25, 2012, 1:01 PM

Hey buddy... It was great  
talking to you. Thanks



Text Message

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11:42 AM



< Back (30)

Billy

Contact

Hey buddy... It was great talking to you. Thanks again for lunch!

My pleasure. It was great to see you

Sep 26, 2012, 2:36 PM

Not meeting with joe till next week, he has to meet hi attorney in the am

Next thirs at noon

Sep 26, 2012, 4:08 PM

Damn... Sorry dude... Did you tell Christina that you left mha?

No not yet



Text Message

Send

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11:42 AM



< Back (30)

Billy

Contact

Damn... Sorry dude... Did you tell Christina that you left mha?

No not yet

It's not that bad of a thing really

Time to deconstruct

Cool... They're going to bring you on... Enjoy the time off!

Sep 27, 2012, 12:43 PM

I was talking to Cristina and told her you left mha... She was like great I can have him meet with the partners then and speed things up. She's going to



Text Message

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11:42 AM



< Back (30)

Billy

Contact

I was talking to Cristina  
and told her you left mha...  
She was like great I can  
have him meet with the  
partners then and speed  
things up. She's going to  
call you.

Ok

And thanks for talking with  
her !

She Really wants you here.

Awesome!

Sep 27, 2012, 3:34 PM

I havent heard from her  
yet. Maybe I am still



Text Message

Send

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11:42 AM



< Back (30)

Billy

Contact

I havent heard from her yet. Maybe I am still meeting with joe on Thursday. Did you tell her I quit on Monday?

No I told her you just did. Attorney's are here so every one is busy with them.

Ah ok

Sep 28, 2012, 12:33 PM

Have you heard anything new today yet?

No... I'll talk to her.

I just spoke with her, she's



Text Message

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11:43 AM



< Back (30)

Billy

Contact

I just spoke with her, she's going to try to move it up, but still set for thurs

Cool

Oct 2, 2012, 4:14 PM

Coming back tomorrow at 10. Let me know if you hear anything.

Calling you from my office

Oct 3, 2012, 1:54 PM

You heard anything?

No been busy. I'll let you know when I do.

Kk



Text

Send



●●○○○ Sprint 3G

11:43 AM



 [Back \(30\)](#)

**Billy**

[Contact](#)

No been busy. I'll let you know when I do.

Kk

Oct 3, 2012, 5:12 PM

You never heard anything?  
I guess she'll call tomorrow

Yes... Here and matt were talking about you offer. She said they lived you and as long as your salary expectations are in line. You should be good

Awesome great news

Thanks, I'm so impatient I was getting anxious.



Text Message

Send



●●○○○ Sprint

10:31 AM



< Back (30)

Billy

Contact

Oct 4, 2012, 3:15 PM

Alright I'm starting on the 15th. Not sure if psych or hospital based, but recruiting

Cool man! Congrats! You get a decent offer?

Ya, they tried to lowball and not give me the commission, but I got it out of them

Hahaha... They give you 50?

She offered the commission thing quick lol. She also said 45, but she is going to try to get



Text Message

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10:31 AM



< Back (30)

Billy

Contact

so.

Cool man... Happy for you.

I'm excited to work with you guys. I might should have said I wanted account manager, but both jobs sound fine.

So much better than mha

It is so far

I had to give Christina your referral for MHA. She said that she doesn't call them for references

Ya, did you crucify?

Oh yeah... They are



Text Message

Send

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10:32 AM



< Back (30)

**Billy**

Contact

Oh yeah... They are  
rescinding your offer

Lol

Oct 31, 2012, 11:50 AM

Came to get a haircut and  
couturier is here.

I always run into him!

Nov 8, 2012, 12:07 PM

Sorry bro... I had to go.

Ya went way long ...

Nov 14, 2012, 9:43 PM

Did you mess with the  
Asus any?



Text Message

Send